FEBRUARY 1991

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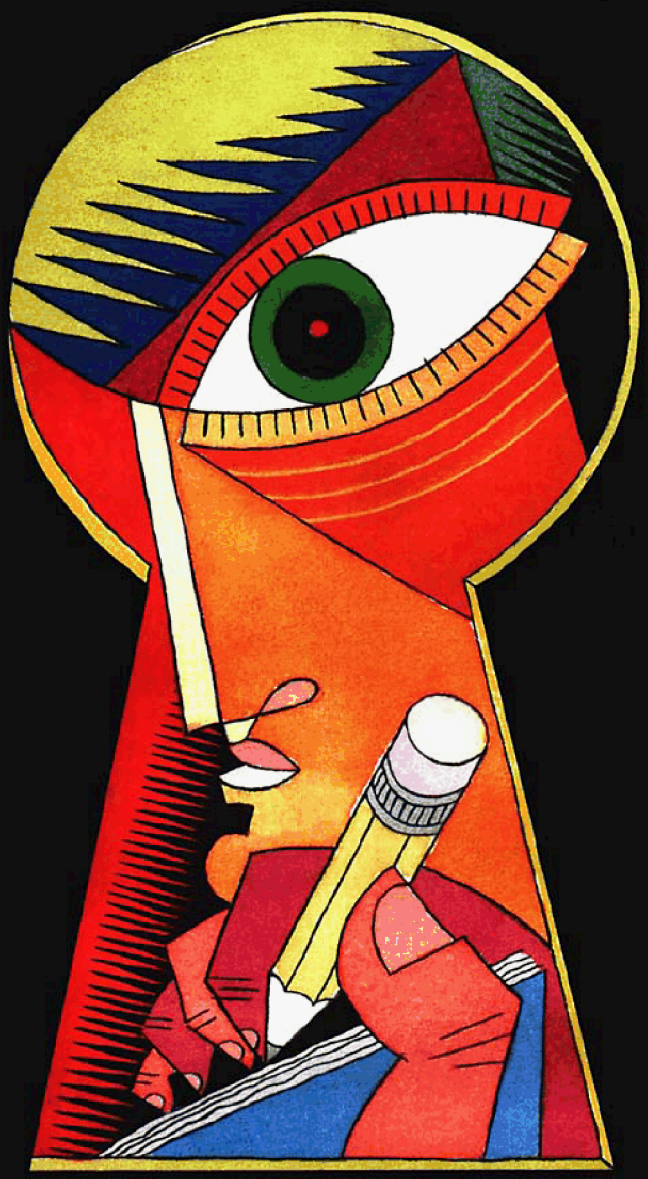
PRIVACY IN PERIL

How Lawyers Uncover Your Deepest Secrets

BY WALTER K. OLSON



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WHAT'S FAIR IN WAR?

VIRGINIA I. POSTREL

As American troops sit poised for war, we once again hear the cries of draft protesters. This time, however, they're not saying "End the draft!" but "Bring it back!"

They say the volunteer Army is too black, too poor, too "unrepresentative." Writes *Newsweek*'s Richard Lacayo, "The prospect of fighting is causing the fairness question, which dominated the congressional debate on taxes...to return in a new form: Will the U.S. be asking its poor and working classes to do most of its fighting and dying?" A draft, critics suggest, would be fairer.

This attitude is based on a false image of U.S. forces and a misguided understanding of fairness.

It is true that the U.S. military does not perfectly mirror the population. It represents not some demographic map—an affirmative-action officer's ideal—but a combination of military needs and individual recruits' choices. It is too young, too healthy, too male, and too educated (94 percent high school graduates versus a 75 percent graduation rate generally).

It draws few recruits from the upper end of the money-and-education distribution, but it also gets few from the bottom. Contrary to the Princeton student who gushed at a teach-in that people like him shouldn't "shirk responsibilities to the people who are there, who are underprivileged, who have no means, who have no way out, who are going to die for me," the volunteer military is not a bunch of losers with nowhere else to turn.

In fact, the military draws primarily from upwardly mobile working-class people—the same sort of people who become firefighters and police officers. An analysis of recruits from 1979 (a year in which improper norming of aptitude tests permitted less-qualified enlistees) found that they came from higher socioeconomic groups than did full-time civilian workers of the same age.

As study author Sue Berryman of Columbia University writes, "The military profile is that of a classically upwardly mobile group. Its members come disproportionately from the racially, ethnically, or socio-economically less enfranchised subgroups in the population." In these respects, Berryman says, today's military resembles the 19th-century enlisted force, of which immigrants made up as much as 70 percent. Throughout American history, she notes, military service has been a vehicle for both economic and social advancement.

Draft advocates see Berryman's results as proof that there's something wrong with U.S. armed forces. "They are not the children of the affluent," says Charles Moskos of Northwestern University. "Whites from the suburbs—you just don't find them."

But is this a problem? Consider the constant harping on the Army's racial composition. We are frequently reminded that blacks make up 20 percent of the military but only 12 percent of the U.S. population. This "disproportionate" representation is hardly surprising.

In recent decades, the military has been the single fairest employer of blacks, offering them an essentially meritocratic system in which race is neither a handicap nor an advantage. And since the military relies heavily on on-the-job training, it has also reduced the educational disadvantages that hinder many blacks in civilian life. It makes perfect sense that blacks have joined the military in large numbers, have reenlisted, and have excelled.

Still, guilt-stricken pundits insist on seeing black soldiers as victims. Instead of according them respect—or trying to determine what the military knows about equal opportunity that civilian employers could emulate—draft advocates just want to get more white bodies into uniform.

In part, draft advocates want more people to feel the sting of military action. Without a draft, they fear, the public, particularly college students, will not rise up to protest military intervention. "If the U.S. military were truly representative of the country, you would have people going through the roof right now," says former Navy Secretary James Webb, a prominent draft advocate.

An all-volunteer force unquestionably makes some kinds of military action easier politically. Decision makers don't need a grand moral crusade to justify sending volunteers into action; the national interest will do. The all-volunteer force gives the president great freedom to commit U.S. troops.

But it also exercises a powerful check on military action. If a war is unpopular, there is immediate feedback at the recruiting centers: Volunteers just don't show up. The government is forced to raise pay (spreading the cost to the public at large), cut troop levels, or both. There is no way to fight a long, drawn-out, no-win war like Vietnam without a guaranteed supply of conscripts. A volunteer military, however "unrepresentative," is extremely democratic. Potential soldiers can vote with their feet.

Which brings us to the heart of the matter: the meaning of fairness. The philosophical communitarians who advocate universal service have no qualms about involuntary servitude, provided it

is equally distributed. They believe we all owe some portion of our lives to the state, so those who don't give their due enjoy an unfair advantage. Group representation becomes, in this scheme, a leading indicator of fairness.

But what about fairness to the individual? To pluck someone from his home, to subject him to military discipline and military law, to endanger his life and thrust him into combat—to do all this without his consent—is the grossest betrayal of American ideals, regardless of how egalitarian this invasion is. Our standard of fairness should be how well we preserve each person's control over his or her own life.

The all-volunteer force bears witness to that standard. It leaves the choice to serve to the individual. It does not enslave the young to further the goals of the old. And it asks the rest of society to pay explicitly, through taxation, for the service it demands. ■

TRADING PLACES

RICK HENDERSON

Margaret Thatcher departed 10 Downing Street less than a week before the General Agreement on Tariffs and Trade talks convened. For advocates of open trade, her timing couldn't have been worse. Among the European leaders, only Thatcher would stand up to the farm lobby and other protectionists on the Continent. And though John Major looks ready to carry Thatcherism into the next century, the immediate future of liberal trade policy appears muddled.

Even if GATT survives the Uruguay Round with any credible authority, a growing number of nations are prepared to abandon the "global marketplace" for a new collection of regional trading blocs. And before the GATT talks opened, an unusual role reversal became apparent: As the developing world begins to embrace free trade, the industrial democracies call for protectionism.

For decades, the economic basket cases of Latin America and Eastern Europe built walls of protection to prop up infant industries or keep out evil bourgeois influences—but only poverty thrived in that atmosphere. When these countries began to liberalize their political systems, they opened up their economies as well.

While these struggling democracies seek outside capital, they also have products to offer the rest of the world. Poland and the Ukraine possess productive farmland; Mexico and Brazil have built modern automotive plants. Access to consumers in rich countries could provide economic growth to stabilize their governments.

But the developed world has also changed its tune. The richest countries have become fat, lazy, and beholden to noisy special interests. The European farm lobby uses environmental appeals to justify huge subsidies and tariffs. Japan will be tempted to build new trade barriers as it loses manufacturing jobs to Taiwan and South Korea. And textile manufacturers in the United States promise to keep up the pressure for more import restrictions.

What happened to the defenders of free trade? Once serious economists scoffed at protectionism. Now Lester Thurow and Paul Krugman, among others, argue that the global economy is too complicated to be governed by archaic notions of free trade. They claim GATT, which attempts to enforce one set of rules for all members, is obsolete. Only free-trade zones and bilateral trade agreements, they say, allow nations the flexibility to reward and retaliate.

Some early reports on free-trade zones look favorable. Mexico might enter the U.S.-Canada agreement; other Latin American countries have expectantly joined the queue. Both Spain and Portugal have clearly benefited from trading with a more-integrated Europe.

Unfortunately, most trading-bloc proposals don't reduce trade barriers, but instead set import targets for specific goods and leave other protectionist measures intact. Free-trade zones could develop into miniature protection rackets (the final version of the E.C. is an example) that pound one another with high tariffs and quotas. This policy environment encourages manufacturers to hire effective lobbyists, not make better products.

The body currently governing world trade—GATT—certainly is inflexible; but that's why it's effective. GATT rewards the nations that lower their trade barriers. A country determined to use tariffs or quotas will punish only itself.

But the arguments of Thurow, Krugman, and the managed traders are winning the debate. As GATT loses its authority, the world economy may come to resemble the chilling vision of columnist Pat Buchanan. In a Thanksgiving Day *Los Angeles Times* op-ed piece, Buchanan celebrates protectionism based on tribalism. He makes no attempt to argue its economic merits. Instead, he says that in a stagnant economy, "the argument for efficiency will not carry the house....From Canada to Soweto, nationalism is ascendant; men are putting tribe, culture, country, first." Advocates of liberal trade recoil in horror from these developments; Buchanan seems to applaud them.

Unfortunately, tribal urges may evolve into policy. Once leaders of the wealthy nations succumb to protectionist pressures, the poorer countries won't find markets for their products. The global economy will splinter, leading to economic collapse in these fragile democracies—and, perhaps, to calls for the generals to return.

Buchanan's arguments confuse regional diversity with racial warfare, free trade with an interventionist foreign policy. He thus ignores the basic right of all persons to trade with anyone they choose. As weak as Buchanan's arguments are, they show that stating the practical case for free trade isn't enough: We have to make the moral argument as well. ■

MILKING MILKEN

JACOB SULLUM

Since Michael Milken's indictment in 1988, his case has elicited an attitude of "condemn first, ask questions later." So it's not surprising that the justifications for Milken's 10-year sentence had an ex-post-facto quality. A *Los Angeles Times* reporter I know first told me Milken definitely got what he had coming, then said he'd have to get back to me with the reasons for that assertion.

George Will, waving his hand dismissively, declared on "This Week with David Brinkley" that Milken deserved his sentence because he was guilty of "grand larceny." Will did not elaborate, and neither did most news accounts.

The denunciations of Milken were broad and nebulous because they were really about who he was, not what he did. His detractors insisted on seeing his case as a morality play or object lesson, rather than the story of one individual. To many he was greed personified, never mind that his lifestyle hardly fit that image. To the prosecutors and the judge who sentenced him, he was a rich and powerful person who had to be punished severely to make a point. In their determination to put on an impressive display of equal treatment before the law, they guaranteed that Milken would be treated unequally.

Federal prosecutor Jess Fardella argued that Milken's sentence "must convince the public at large that individuals of great wealth and power do not receive special treatment at the bar of justice." Literally, this means socioeconomic status should confer neither an advantage nor a handicap. But the prosecutors—and, as it turned out, federal Judge Kimba Wood as well—were worried about only half of this principle.

A more subtle perversion of justice was also at work. Treating like cases alike requires getting beyond superficial differences and discerning the essential similarity between pocket picking and electronic embezzlement, between burglary and investment fraud. Theft is no less a violation of rights when it is subtle or complex. But neither is subtlety or complexity in itself an indication of wrongdoing. This fallacy seemed to be at the heart of the popular reaction to Milken's crimes.

To someone who is not familiar with financial markets, there's something inherently suspicious about a guy who can make $550 million in one year through means that are not instantly understandable. But as Michael Lewis, author of *Liar's Poker* and no fan of high-flying Wall Street types, conceded, "No more than a few of those dollars can be traced to Milken's crimes."

In any case, it's difficult to believe that the average person could summon much indignation at the particulars of the six counts to which Milken pleaded guilty. For the most part, he helped clients avoid taxes or withhold information from the SEC. This involved buying and selling securities in certain calculated ways and failing to complete forms required by the SEC.

The most serious infraction was Milken's failure to tell shareholders in an investment fund that they were being charged indirectly to cover the fees of Drexel brokers selling shares in the fund. This is the only crime that clearly involved imposing a cost on third parties without their consent.

Still, Milken acted wrongly in breaking the rules of the exchange. Whether or not the federal regulations are valid exercises of government power, Milken had agreed to abide by them. Violating reporting requirements was therefore a breach of contract. Such breaches, however, are properly handled as civil matters. Milken had already been banned from trading, and he had agreed to pay $600 million in fines and restitution. Why send him to jail?

Wood acknowledged that the goals of individual deterrence, punishment, retribution, and rehabilitation could be served without a 10-year prison term. But she argued that the sentence was necessary for the sake of "general deterrence"—to discourage others from doing what Milken did. "Crimes that are hard to detect warrant greater punishment in order to be effective in deterring others from committing them," she said.

In other words, deterrence is a function of both the magnitude of punishment and the likelihood of being caught. The lower the likelihood of being caught, the harsher the punishment has to be to maintain the same level of deterence. But the value of deterrence cannot be judged without considering the severity of the crime. Otherwise, we would execute people for littering.

Wood herself characterized Milken's crimes as "skirting the law, stepping just over to the wrong side" and "cutting legal and ethical corners." Perhaps Wood should have set aside her general-deterrence calculator and asked: Is this the kind of thing a person should serve 10 years in prison for?

The fact that violent criminals, including murderers, serve less time is not directly relevant, but it should have given Wood pause. Furthermore, Milken's sentence is disproportionate even within the context of white-collar crime. His prison term falls outside the boundaries of the more than 75 sentences imposed on defendants in Wall Street cases during the last decade. For example, Ivan Boesky, who admitted to buying stolen inside information, received a three-year sentence and is out on parole.

Those who applauded Milken's sentence talked a lot about "sending a message." Given her emphasis on general deterrence, this was clearly Wood's intent. When a case hinges on such vague considerations, rather than the actual conduct of the defendant, justice fails. Milken tried to tell Wood this in a letter before he was sentenced. "I've never sought notoriety," he wrote. "I am a person, not a symbol."

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LETTERS

Donkey Kong

In "Don't Dismiss the Democrats" (Nov.), Joel Kotkin demonstrates a truly creative use of words when he belittles the idea of "putting someone in jail for...performing an abortion." Why, anyone who would jail someone just for "performing" must be a menace to all actors, jugglers, concert pianists, etc. By all means, let us encourage the free expression of performers: of Ted Bundy, who performed mass murder so audaciously and creatively; of the Central Park teenagers, who performed rape and assault with so much enthusiasm; of Saddam Hussein, who has performed the magic act of making Kuwait disappear; of Josef Stalin, who performed land reform by cleverly starving millions of kulaks; and of Adolf Hitler, whose followers raised performance art to a new height by the zeal and efficiency with which they performed genocide.

The issue, of course, is whether a "performance" takes away someone else's rights. An unborn baby has no less human life than does a newborn baby, a handicapped person, a mature adult, or a senior citizen afflicted with Alzheimer's. To say that government has the power to give one person the right to extinguish another (innocent) human life is to turn the concept of libertarianism on its head. And to say, as does Mr. Kotkin, that a person who snuffs out an innocent life should not be brought to justice by the state is to completely misunderstand the proper function of government.

Robert L. Brittingham
Memphis, TN

I FAIL TO SEE MUCH positive in Joel Kotkin's embracing the donkey over the elephant because, he says, "the Republican Party...has chosen to embrace within its core the most repressive elements in our society." I find liberals abandoning the First Amendment (by calling for curbs on "racist" speech at universities, for example) and promoting a "fair draft" for the upcoming war with Iraq (that supposedly would alter the "discriminatory" race- and class-based makeup of our all-volunteer armed forces) far more frightening than conservatives giving lip service to a drug war everyone knows is a joke or defunding performance art by chocolate-splattered feminists parading in the buff. All told, if one chooses not to become a big-L Libertarian, one is better off joining the Dumbos than the Eeyores. Dumbo's positions may be asinine, but Eeyore's ideological shifts are dumb like a fox.

Sally Anne Moore
Cincinnati, OH

SO JOEL KOTKIN won't register as a Republican because he doesn't wish to ally himself "with proto-fascists like Bill Bennett and Jesse Helms." I'm not particularly fond of those two myself. On the other hand, I won't become a Democrat because I refuse to ally myself with the likes of Ted Kennedy.

Come on, Kotkin. The Democratic Party has time and again proven itself to be purely statist and socialist. Read its last several party platforms and breathe deeply their strange and esoteric smells. Better yet, take a good long look at the party's most recent presidential candidate.

Lawrence D. Skutch
Westport, CT

Farmers Market

Jeff Taylor's article criticizing the Textile, Apparel, and Footwear Trade Act of 1990 ("Wooly Bullies," Dec.) was right on target with one exception: the implication that American agribusiness would

benefit from a failed Uruguay Round of GATT talks.

In fact, the majority of American farmers would benefit more from reductions in foreign trade barriers and European farm subsidies than they would "lose" from continuing to rely on government farm policy. As a result, mainstream farm groups urged Congress to uphold President Bush's veto of the textile bill so that the GATT talks could continue.

True, four Democratic farm-state senators who voted against the 1985 textile bill joined Minority Leader Robert Dole (R-Kan.) and supported the 1990 legislation. But the House vote to sustain President Bush's veto included representatives from the country's 10 largest farm states.

Taylor is right that the protectionists will be back. For hundreds of years, the battle for free trade has been more successfully fought in textbooks than in reality. But as foreign barriers fall and more individuals come to depend on trade for their jobs, the chances increase that protectionism will be relegated to the classroom, where it belongs.

Bryan Riley
Director of Trade Policy
Citizens for a Sound Economy
Washington, DC

JEFF TAYLOR'S "Wooly Bullies" was on target, but deficient in at least one important respect: The bulk of American farmers, represented by the American Farm Bureau Federation (3.8 million member families) were strongly opposed to the Textile, Apparel, and Footwear Trade Act of 1990, and supported its veto.

Most farmers know that a free-trade policy is in their own best interest as well as that of the nation and world as a whole. Unlike the labor movement and a good portion of American industry, farmers have been steadfast in modern times in their support for free trade.

If the current GATT talks fail, it will be due to the European Community's stubborn resistance to the reduction of farm subsidies, including dumping through subsidized exports. The U.S. proposal to substantially reduce or eliminate farm

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Hussein and Arafat – Birds of a Feather

How they engineered the bloody events in Jerusalem

On Monday, October 8,1990, on the Jewish festival of Succoth, about 20,000 Jews assembled for prayer at the Western Wall in Jerusalem, the holiest place in the Jewish religion. Two mosques are also located on Temple Mount, high above the Wall. Because of the indulgence and respect for other religions, the Israeli authorities allow them to operate freely and fully under the jurisdiction of Moslem religious authorities. Suddenly and without any provocation, whipped into a frenzy by their clerics, a raging mob of 4,000 Moslem Arabs stormed out of the mosques and loosed a barrage of rocks, bricks, and Molotov cocktails on the worshipping crowd below them. Twenty-eight people were severely injured. By miracle, nobody was killed. The mob then attacked the Israeli police post and set it afire. The police responded, first with tear gas and then rubber bullets. When those ran out and when 40 police were at the point of being lynched they opened fire with live ammunition. Twenty Arabs died and twenty martyrs had been created.

What are the facts?

■ There is no question in anybody's mind that the bloody incident was engineered and organized by Saddam Hussein, the "Butcher of Baghdad", and Yasser Arafat, the master terrorist and "president" of the non-existent state of "Palestine'. After virtually every Arab leader has turned against Hussein, Yasser Arafat remains steadfastly loyal to him. And why not? Both have the destruction of Israel at the very top of their agendas -- in fact Arafat has no other agenda; he surely doesn't care at all about the fate of Kuwait. The bloody incident on the Temple Mount served the purposes of both. They rightly expected that it would take, at least temporarily, the heat and the focus off Saddam Hussein and had the potential to weaken the tenuous common front between the United States and our new-found Arab "allies". As to Arafat, the incident was certain to put the "Palestinian problem", which because of the troubles in the Gulf had taken a back seat, once again into the spotlight. That twenty Palestinian Arabs had died was a small price to pay, because human life is cheap for both Hussein and Arafat. Naturally, they had hoped that a few hundred Jews would also die in that fusillade of rocks. But, by great good fortune, that turned out not to be.

Birds of a Feather: Saddam Hussein and Yasser Arafat, two enemies of the U.S. in loving embrace.

■ One of Saddam Hussein's and Yasser Arafat's main themes is the linkage of any possible withdrawal from Kuwait with a demand for Israeli withdrawal from the "West Bank". This is a ludicrous proposal and, so far at least, most of the Western world has called it just that. If the world's minorities problems must be solved, why not address the "Irish question", which has been festering for centuries? Why not settle the age-old grievances of the Basques, those of the ethnic Albanians in Yugoslavia and, closest to home and right in Iraq, the justified despair of the Kurds, whose aspirations Saddam Hussein "solves" by poison gassing thousands, and by forcefully relocating the rest? Iraq has annexed Kuwait in an act of aggression motivated by greed. Israel came to administer (not to annex!) the "West Bank" and the Gaza strip as the result of its victory in the Six-Day War. Israel has always been ready to negotiate the ultimate status of these territories. It promised to do so in the Camp David Accords as the result of which it also returned the vast Sinai Peninsula to Egypt.

By his actions and by his statements, Yasser Arafat has clearly demonstrated that he is a bird of the same feather as Saddam Hussein. Arafat's immediate ambition is to shift the focus of interest from the Gulf to Israel, in order to gloss over the crimes of Hussein, to change the conflict of the World vs. Iraq into the conflict of the Arabs vs. Israel, and thus to break up the fragile coalition between the United States and its Arab "allies". The recent bloody incidents in Jerusalem were clearly provoked for that purpose by Arafat and the PLO, in connivance with Saddam Hussein. Regrettably, the United States in great haste, without even ascertaining the facts, and in order to curry favor with our new Arab "allies" (among them the murderous Syrians), introduced a resolution into the Security Council of the United Nations that condemned Israel's actions.

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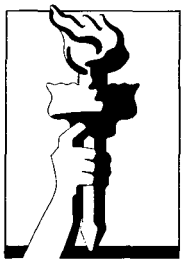

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LETTERS

subsidies in Europe and the United States is a logical extension of freer trade and elimination of the costly and unproductive system of production controls and subsidies that have plagued farmers for far too long.

C.H. Fields
Alexandria, VA

Collusion Policy

Jacob Sullum's examination of the U.S. auto-insurance industry ("Totaled!," Nov.) was highly perceptive. The only shortcoming in this otherwise sterling piece was the omission of the role the McCarran-Ferguson Act has played in creating not only the auto-insurance mess but also the troubles in other sectors of insurance.

The McCarran-Ferguson Act exempts the insurance industry from antitrust suits (with a few minor exceptions). The reason given is that insurance companies can better set rates if they share their actuarial data. Further, consumers will be better able to compare insurance products if each company offers policies based on a common form (as is currently provided by the Insurance Services Office).

Of course, sharing these data does enlarge the statistical sample on which insurers rely to set rates. However, rates are just as likely to be set for other reasons. Overhead, claims losses, investment income, and so on vary from insurer to insurer. Rates reflect far more than just the insurance risk the insurer is accepting. The case for sharing data appears less than compelling.

As for product comparison, the current system seems to favor the notion that "you can have any color car you want so long as it's black." An auto policy based on a common form is unlikely to vary much from company to company. So the consumer's choice becomes one of which agent smiled more warmly rather than which company will suit the policyholder's insurance needs. Warm smiles are important, but insurance tailored to the needs of the client is better than off-the-rack coverage. Form-based policies diminish this diversity.

A further provision of the McCarran-Ferguson Act places the responsibility for regulating the insurance industry on the states—a wonderful example of federal government spinelessness. Congress and the White House excuse the industry from antitrust rules and then require the states to deal with this stacked deck. The feds shouldn't set such rules in the first place. But when they do, they ought to clean up the mess that follows.

Jeff Myhre
Executive Editor
Lloyd's of London Press Inc.
New York, NY

Mr. Sullum replies: The McCarran-Ferguson antitrust exemption does not appear to be a significant factor affecting price or diversity in the auto-insurance market. Large companies generally set their own rates and do not need access to data collected by other insurers. In any case, I don't see any objection to allowing companies to share information, so long as barriers to entry remain low enough to deter collusion. Indeed, the ready availability of rate-setting data probably helps to promote competition.

Rigorous Concerns

In his review of Jean-Claude Derian's *America's Struggle for Leadership in Technology* ("Oú Est le Boeuf?," Nov.), Michael Schrage observes that "this book is marred by an unrigorous approach to these techno-cultures. While Derain relentlessly cites newspaper articles and book passages, he appears to have conducted only a handful of interviews with real, live people."

Regardless of the merits of Derian's book, I find this remark to be a classic example of intellectual narrowness. It confuses a particular style of writing and research, known as journalism, with the generality of knowledge about humanity.

Journalism is only one way of writing about human affairs. There are many others, of equal validity. Each method has its own advantages and disadvantages. None can afford to issue a blanket denigration of the others for not being like itself.

For example, historical research deals

with texts; ethnography, or participant observation, requires initiation into the group under study; and social statistics, in such areas as geography, economics, or sociology, compiles and interprets numerical data.

In none of these areas are the number and nature of the interviews a valid criterion of rigor. Each has its own criteria.

And, of course, various composite or synthetic approaches are possible as well. In such cases, one must still be cautious in criticism since one may not completely understand the author's methodology and may therefore miss the point.

Journalism, in turn, can be savaged by the partisans of the alternative approaches.

A historian would dismiss a work merely consisting of interviews with: "How do you know that he actually said a year ago what he just told you he said then?"

An ethnographer would say: "How can you possibly know anything about these people when you spent such a short time with them? You have to get beyond the facade they put up for strangers."

A social statistician would say: "Gather some numbers to show that the people you interviewed are statistically typical, that they aren't just unimportant exceptions."

If Derian's book in fact lacks interviews, then it may not be journalism, or at any rate, journalism of the type Mr. Schrage is accustomed to. Do not confuse that with lack of intellectual rigor.

Andrew D. Todd
Springfield, OR

School Book

Regarding Martin Morse Wooster's review of *Politics, Markets, and America's Schools* ("Poor Man's Choice," Nov.), did he and I read the same book? Judging from his assessment of John Chubb and Terry Moe's choice proposals, I would have to guess that we did not.

Wooster contends that the Chubb/Moe plan stops short of the kind of "education voucher" plan advocated by the Heritage

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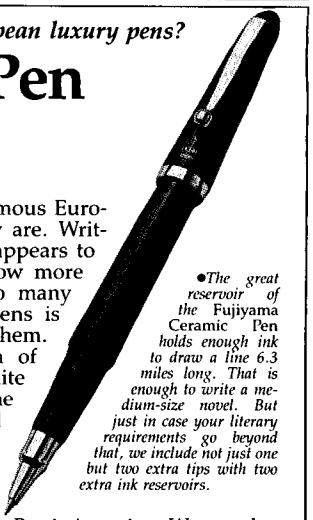

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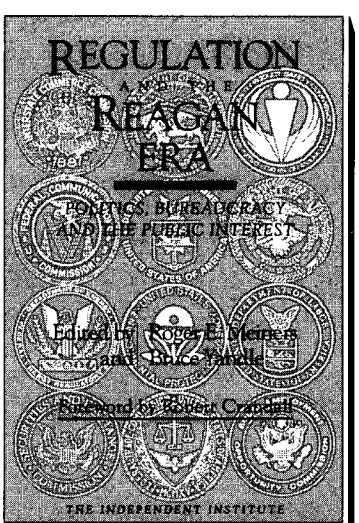

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LETTERS

Foundation and others. He also indicates that private schools would have to be "nationalized" in order to participate in the plan, thus "ensuring that few, if any, truly private schools would remain." Unfortunately, Wooster seems to have been fooled by a semantic trick Chubb and Moe have used in their writings to defend against attacks from the left.

What their plan does is change the official definition of "public school," so as to include those private schools that express an interest in receiving "scholarships" (a more politically acceptable term than *vouchers*) from the government. The authors state specifically that the criteria for being designated a public school should be exactly those standards—minimal health and safety standards, existence of an educational program, etc.—that most states *already* impose on private schools. Thus, the amount of state regulation imposed on private schools would not increase under the Chubb/Moe approach, except perhaps regarding racial balances (though it's unclear that the authors would require even that sort of restriction if political or legal considerations did not exist). Besides, private schools choosing to become "public" would know that going in.

I read Chubb and Moe as trying to formulate not a "liberal's" ideal choice plan, but instead one that has a realistic chance of being enacted by local or state governments across the country, including those with vivid histories of racial animosities surrounding public schooling. Wooster's claim that polls show tremendous public support for "vouchers" is simply untrue. In poll after poll, respondents support the concept of choice among public and private schools, to be sure—but throw in the word *voucher* and the numbers drop significantly. Politically speaking, advocating choice plans in some jurisdictions is fraught with peril, from the education establishment, civil rights groups, or a public wary of the notion of "destroying public education" or reintroducing segregation. If Chubb and Moe use definitional and semantic devices to shunt aside potential rhetorical salvos against market-oriented education reform, it is incumbent upon scholars and journalists to recognize that.

For all intents and purposes, the Chubb/Moe approach is a voucher program, somewhat more regulated than might be optimal, but cleverly designed to include public, private, parochial, and proprietary schools without explosive political outcry. Even *its* passage into actual law is a lot to hope for.

John Hood
Raleigh, NC

Mr. Wooster replies: Under voucher plans, parents receive checks from the state which they can then spend as they please. Under Chubb and Moe's plan, parents go to a "Parent Information Center," look over a list of schools, and then select from a state-approved list. No monies are given to parents. Therefore, the Chubb/Moe plan is not a voucher plan. Indeed, on pages 217 and 218 of their book, the authors attack "the stereotypical identification of choice with vouchers" because "vouchers are not even necessary."

Admittedly, neither Chubb nor Moe call for controls over the content of private schools who choose to become state-funded. But when private schools are bailed out by the state (a process of nationalization as certain as the takeover of private railroads by the U.S. government in the 1970s), history shows that the content of these schools' curricula is gradually restricted. Certainly this has been the case in the Netherlands and in Canada. Moreover, can Hood be certain that the courts would allow state funding of a school with *any* religious content?

As I noted in my review, certainly a public school system designed by John Chubb and Terry Moe would be far better than any public school system that now exists. But that does not mean that their plan is ideal.

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Indecent Exposure

If the Federal Communications Commission has its way, TV shows like "Married...with Children," "In Living Color," and "Saturday Night Live" could be a thing of the past. In response to a 1988 congressional mandate, the FCC is seeking to expand its time-of-broadcast restrictions on "indecent" programming to a 24-hour ban.

The ban has been challenged as a violation of the First Amendment by a broad coalition that includes the National Association of Broadcasters, the American Civil Liberties Union, and Action for Children's Television. A federal appeals court is scheduled to hear oral arguments in the case, *Action for Children's Television* v. *FCC*, on January 28.

"We firmly believe that the FCC will find the 24-hour ban unconstitutional," says Steven A. Bookshester, associate general counsel for the NAB. "It makes no sense to say that you can ban protected speech from the airwaves."

The FCC's definition of indecency is "language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activity or organs." Bookshester notes that the "community" setting those standards in effect consists of the FCC's five commissioners. "One can only imagine what the FCC would find indecent," he says. "It is what they say it is."

The ban would not apply to cable television. The FCC reasons that subscribing to cable TV requires an action beyond purchasing a television set and that parents can use lock devices to keep their kids from watching, say, the Playboy Channel. But Bookshester notes that locks are also available for broadcast television; in any case, he says, parents can always pull the plug.

More surprising than the NAB's stand is the position of ACT, which pushed the Children's Television Act on the assumption that parents can't be expected to control their kids' exposure to toy commercials and mindless cartoons. ACT says it wants to improve the quality of children's shows, not transform all programming into kiddie TV. ACT's president, Peggy Charren, told *Fortune*: "Protecting children from indecency is the job of parents."

—Jacob Sullum

Pressing Freedom

Along with food and consumer goods, residents of the former Soviet Bloc crave information from the outside world—especially books. The Institute for Humane Studies, a classical-liberal academic foundation, based at George Mason University, has launched a campaign to ship at least $1 million worth of market-oriented books to private book stores in Eastern and Central Europe.

Donations from publishers and bulk purchases have permitted IHS to obtain the books at 15 to 30 percent of the retail cost. The first shipment of books, valued at about $100,000, went to Poland in early November. (For further information, contact Tom Palmer, Institute for Humane Studies, 4400 University Dr., Fairfax, VA 22030. 703-323-1055.)

—Rick Henderson

Money for Nothing

George Bush may have broken his "no new taxes" pledge, but at least he got a deficit reduction package, right? Well, not exactly. The Heritage Foundation reports that the government will spend $1.75 for each new dollar of taxes in the budget accord. By now, most people know that the package includes $500,000 for a Lawrence Welk museum, but negotiators failed to cut many other questionable programs.

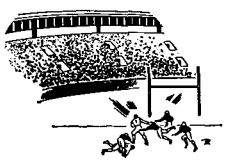
- $100,000 to study the sand on Waikiki beach
- $100,000 to develop soybean ink
- $1.95 million for Philadelphia's New Freedom Theater
- $1.7 million for a bee lab
- $2.7 million for a fish farm in Arkansas
- $3.4 million for shrimp aquaculture
- $3.6 million for urban gardening
- $4.4 million for a navigation project at Redondo Beach, California
- $5.1 million to fight witchweed
- $34.3 million for a flood-control project in Phoenix

Source: Heritage Foundation

BALANCE SHEET

Assets

Jaw, Jaw. George Will, George Mitchell, Les Aspin, and Pat Buchanan agree: Before the United States launches an offensive against Iraq, Congress should discuss it. George Bush hesitates, fearing criticism in an open debate. But in a protracted or bloody campaign, naysayers will swoop down on Washington. Congress dodged responsibility for U.S. military policy in Vietnam. Will today's legislators hang tough if they face the critics' ire?



Giant Step. Voters in Santa Clara County, California, turn down tax measures to fund a new stadium for the San Francisco Giants. Fed up with aging Candlestick Park, franchise owner Bob Lurie may move the team out of the Bay Area. (See "Field of Dreams," May 1990.) Meanwhile, 49ers owner Eddie DeBartolo wants to buy the Giants and privately build his own stadium for both teams.

Labor Camp. No longer do prison inmates pay their debts to society by stamping out license plates. In Petersburg, Virginia, federal prisoners earn money assembling spare parts for the military. Nearly 14,000 inmates produce goods for federal agencies as employees of Unicor, the government's prison-factory corporation. The idea's going national: A California initiative sets up a similar system for state prisoners.

Perfect Landing. The easiest way to break gridlock at airports is to add gates and runways. The new budget permits passenger facility charges—user fees of no more than $3.00 that an airport can add to each ticket sold. Unlike current federal ticket taxes, the money won't go to the Treasury Department. It has to be spent at the airport where it's collected. Score one for the new federalism.

Liabilities

McGarbage. McDonald's decides to replace polystyrene food containers with coated paper. Environmentalists and the media go wild. But wait a minute: Polystyrene recycles more easily than coated paper and takes less energy to produce. That's why McDonald's went poly in 1975. But coated paper *is* cheaper than polystryrene. Don't dye Ronald's wig green yet.

Choice Cuts. The Educational Choice Initiative loses big in Oregon. And in Wisconsin, a state court throws out the Milwaukee voucher program. (See Trends, July 1990, and "Champion of Choice," Oct. 1990.) The Wisconsin ruling is technical, though—the voucher bill was illegally attached to a spending resolution. An appeal (or a new vote in the legislature) might save the program.

Wall Hanging. If you buy a work of art, you no longer own it. Congress passes the Kennedy-Kastenmeier artists' rights bill. Civil fines will penalize "unauthorized mutilation" of paintings, sculptures, some photographs—and possibly colorized movies. Also, muralists Elaine Yoneoka and Paul Goodnight win lawsuits seeking protection for their works after they've sold them. (See "Postmodern Art Laws," May 1990.) Woodman, spare that wall!

Unconscious Objectors. The all-volunteer armed forces face a new problem in the Persian Gulf: conscientious objectors. *Mother Jones* defends a Marine supply clerk who refused to go to Saudi Arabia. Listen up, maggots! The Marine Corps is neither a travel agency nor a welfare program for college students. Joining the Marines implies doing that shooting thing. Where's Louis Gossett, Jr., when you need him?

—Rick Henderson

Wiseguys

Most of us can tell the difference between Ralston Purina Co. and the Mafia. Between Adolph Coors Co. and the Yakuza. Unfortunately for Purina and Coors, some lawyers can't tell the difference.

Purina and Coors—along with Mobil Corp., Perrier Group, Prudential Insurance Co., and a number of other national companies—have recently seen false-advertising claims grow into racketeering suits.

For plaintiffs' attorneys, a win under the federal racketeering statute (RICO) promises a more lucrative reward than standard false-advertising claims. RICO mandates treble damages plus attorney's fees. To turn a false-advertising claim into a RICO suit, plaintiffs usually contend that

the company also violated federal wire and mail fraud statutes. Often the mere use of the mail or telephones to develop and sell fraudulent ads is considered a violation. But some judges are skeptical of such claims. In 1989, a Philadelphia federal judge dismissed the RICO charges in a false-advertising suit against Suzuki.

If a judge allows RICO actions to proceed, companies tend to settle out of court rather than risk conviction under RICO. "The word *racketeering* is an enormously serious stigma," says Dan Jaffe, executive vice president of the Association of National Advertisers.

Advertising Age reports that last year Ralston Purina agreed to a $680,000 settlement rather than risk a guilty verdict under RICO. In separate false advertising-based cases, Norelco settled for $2.5 million and Beech-Nut for $5 million rather than risk RICO.

—Charles Oliver

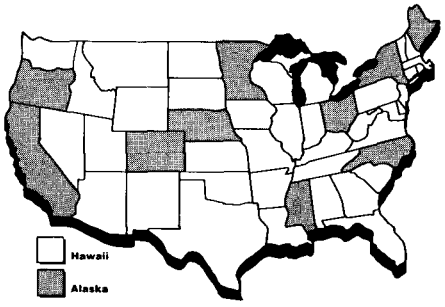
Pot Shots

Bill Bennett is gone, but his spirit of intolerance lives on. Alaska recently recriminalized marijuana possession, and Congress has passed a law intended to ensure that other states follow suit.

Last November, Alaska voters approved an initiative that establishes a penalty of up to 90 days in jail and a $1,000 fine for minor pot possession. Possession of up to four ounces of marijuana for personal consumption in the home had been legal since 1975, when the Alaska Supreme Court ruled that the state constitution's privacy clause protects such pot use. That decision hinged on expert testimony that marijuana is a relatively innocuous drug.

Opponents plan to test the new law soon after it goes into effect on February 4. "The facts on marijuana have not changed in 15 years," says Glenda Straube, campaign manager of Alaskans for Privacy. The initiative, she says, succeeded because of vague, generalized fears about illegal drugs. (The measure got 55 percent of the vote—a solid victory margin, but hardly indicative of a consensus.)

Even if the initiative is overturned, the legislatures in Alaska and the 10 other states that have decriminalized minor marijuana possession will feel pressure to backpedal. Congress recently approved a bill that would withhold federal highway funds from states that fail to enact a new penalty for pot users. To keep their transportation money, states must suspend the driver's licenses of drug offenders, including those convicted of marijuana possession, for a minimum of six months.

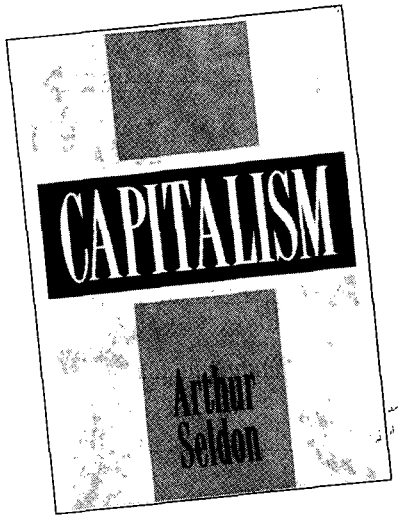


States with liberal pot laws—for now.

The law—which uses the same method that forced states to raise their alcohol-purchase ages—does include an escape clause: A state legislature can explicity vote to oppose the penalty. If the governor approves the vote, the state is exempt.

Few politicians, however, are likely to go on the record as favoring lenient treatment of drug offenders. "We are definitely going to see recrim bills in all the decrim states," says Dale Gieringer, California state coordinator of the National Organization for the Reform of Marijuana Laws. "Smoke a joint, lose your license."

—Jacob Sullum



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BRICKBATS

Last fall, Madonna took part in a colorful get-out-the-vote campaign by MTV. Wearing a red bikini, black leather boots, and an American flag, she rapped, "Dr. King, Malcolm X. Freedom of speech is as good as sex." But when Fox network news did a story on the campaign, reporters found that Madonna wasn't registered to vote in any of the likely places. In fact, they reported, no one could confirm that she was registered anywhere. Maybe they got suspicious when, at the end of the commercial, Madonna said that people who didn't vote should be spanked.

J&B Scotch polled 1,000 Americans and found that more of them would like to have dinner with cartoon brat Bart Simpson than with cartoon president George Bush.

Apparently some people really don't want to have dinner with Bush. Before sitting down to Thanksgiving dinner with the president, U.S. troops in Saudi Arabia had their weapons unloaded and the bolts removed from their rifles.

Pundits ask where the Churchills, Lincolns, Washingtons, and Disraelis of tomorrow will come from. Consider this: Former professional wrestler Jesse "The Body" Ventura is now mayor of Brooklyn Park, Minnesota. Ventura received 60 percent of the vote in the state's sixth-largest city.

And Palm Springs, California, Mayor Sonny Bono has announced that he will run for Alan Cranston's Senate seat in 1992. They say that politics makes strange bedfellows. I think his marriage to Cher has prepared him for that.

In San Diego, a mother has filed suit against Arista Records on behalf of her young son. The suit charges that the revelation that Milli Vanilli didn't sing on their album has left the boy disillusioned. Just think what voting will do to him.

A judge in San Jose, California, rejected Sherman Hill's argument that his dog Queenie should count in a car-pool lane because the animal watched for cars and warned his master, whose eyesight is failing. Hill argued that he was training the dog as a "seeing-eye driver." So the diamond lanes are still safe.

Magician Doug Henning and Indian guru Maharishi Mahesh Yogi have announced plans for Vedaland—a new $1-billion theme park near Orlando, Florida, that will combine the best of magic and meditation. *Veda* is an Eastern term for knowledge. And it is an apt name for the park, considering that Yogi is smarter than the average guru.

And in St. Petersburg, Florida, would-be bartender Mike Albrego has won an EEOC sex-discrimination complaint against the Hooters restaurant chain, which refused to hire him. The EEOC was unmoved by the chain's arguments that the hirsute Albrego would look silly in the required "Hooters' girl" uniform—orange shorts and a cut-off T-shirt.

Meanwhile, in Washington, D.C., George Washington Law School professor John Banzhaf has filed a complaint with the Office of Human Rights against 15 area bars. Banzhaf claims that the bars violate district antidiscrimination ordinances by giving women free or reduced-price drinks on "ladies' nights." It seems that Banzhaf has discovered a new right: the right to more-expensive liquor.

For some reason, the European Community Office of Press Affairs sent me a press release announcing that Eastern Europe's newly won press freedoms are in danger. Why, you ask? Press barons such as Rupert Murdoch are buying Eastern European papers. And the area's nascent free-market economies are in danger of collapsing. Why? Western nations aren't giving them enough money. If this goes on, Eastern Europe will soon be more capitalist than Western Europe.

—Charles Oliver

BY WALTER OLSON

If you get arrested, you have the right to remain silent. But if you get sued, they have ways of making you talk.

NO

IF YOUR EX-SPOUSE SUES YOU FOR custody of your children, you may open the mail one day to find one of the standard-form information demands ("interrogatories") from the widely used lawyers' handbook *Bender's Forms of Discovery*. It contains 207 questions to answer under oath. The actual number is quite a bit higher than 207, however, because many questions are divided into a), b), c), and so on.

Question number 58 asks, "Are there any regular visitors to your home?" If so, number 59 wants to know: "a) Name and address of each regular visitor; b) Each person's occupation; c) The frequency with which each person visits your home; d) How you met each person." You must then tell what happens when each friend stops by, with separate entries for when their children come along and when they do not.

After a long section exploring the drinking habits of you and everyone else in your household comes "Social and Political Ideologies. 118. Are you a member of any associations, organizations or clubs?" You must tell how long you have been a member of each group, what you do there, and so forth. The section probing matters of race and national origin is long and unnerving, but it is outdone by the section titled Religious Beliefs: "142. Do you believe in a Supreme Being? 143. How would you describe this Supreme

TIM CLARK

Being?...147. How often do you attend church?"

The sheer protraction of litigation, being stuck in it for years while the ruinous legal fees bleed away, is not its only terror. Another is the loss of privacy. Most people have secrets: some off-the-books income, a bad habit that's hard to break, an irregular romance. Even persons with clean records and easy consciences are loath to reveal their bank statements and tax records or to repeat the private opinions and behind-the-back utterances they have vented about colleagues and friends. Trade formulas, customer data, and inside knowledge of markets can be crucial, sometimes the most crucial, assets of a business or organization.

Cross-examination—questioning by a hostile lawyer—has long been one of the most feared ordeals in the law. Many a blameless litigant has settled rather than face such grilling. That is one reason criminal defendants enjoy absolute protection against having to testify against themselves, without adverse inference being drawn. But those caught up in civil litigation enjoy no such protection, whether plaintiffs, defendants, or bystander witnesses.

SECRETS

Fortunately, there is one big safeguard for the target of cross-examination at trial: A judge is sitting there. One of the essential roles of a trial judge is to keep lawyers on the straight and narrow by preventing brutal or overly intrusive questioning. Lifting a judicial eyebrow is often enough to curb dubious conduct, but another control is more systematic and reliable. Judges enforce rules of evidence.

The exclusion of irrelevant evidence is the great defense of privacy in litigation. Most of us can take comfort in the thought that our most embarrassing secrets aren't very relevant to whatever litigation we might land in. If your custody case were at trial, for example, a judge would soon call a halt to lengthy questioning about your religious affiliations, friends, and drinking habits unless it were leading up to a major disclosure. The opposing lawyer would not be allowed to fish around for hours in hopes that an eccentric spiritual belief or ne'er-do-well acquaintance would turn up.

The famous old textbook rules against opinion and hearsay also reduce both the time spent on the stand and the painfulness of what is said there. They let you concentrate on telling what you yourself have seen, said, and done, with a minimum of occasions for ratting on your friends or disclosing your personal views of the characters of your in-laws or boss.

The power entrusted to lawyers to compel answers to questions under oath is so extraordinary that for nearly all of legal history it was essentially limited to pleadings and trial, the two times when judges supervised lawsuits. Lawyers have all sorts of reasons to want to force their opponents to confess information at other times and places. But the old system gave them few and meager chances to carry out such advance *discovery* of evidence.

Most notably, they could ask a judge's permission to conduct the sort of interview known as a deposition. The idea was simple and the limitations revealing. Some witnesses won't make it to trial. Some die, some sail over the seas to far places; some go mad, like Miss Flite in *Bleak House*, from the litigation itself or more natural causes. To avoid losing the testimony of such witnesses, lawyers could request court permission to ask them sworn questions before a notary or other officer.

On the rare occasions when lawyers could take depositions, it was under drastic conditions. Of course, their questions had to be relevant and admissible under the rules of evidence. Some courts, hewing to the principle that discovery was a last resort, forbade lawyers to compel the admission of facts they could learn elsewhere. Another rule permitted lawyers to ask only for evidence that supported their own case, not their opponent's. The point of the own-case-only rule was to foil perjury. To reveal the whole of one's evidence would teach a dishonest opponent exactly what he could get away with saying.

Thus matters stood for a very long time. A few minor rules aided discovery: For example, lawyers could ask that their opponents be made to present for inspection certain documents of obvious relevance to their case, such as a contract their client had signed. But for the most part they had to rely on what they could glean from friendly witnesses, their own investigations, and whatever the other side revealed in negotiations.

OVER THE YEARS, STATES EXPANDED THE realm of discovery. New York's Field Code of 1848, for instance, allowed lawyers to pose both oral and written questions purely to help prepare their case, without asking court permission. A few states went even further. In principle, these were startling innovations: The old right to remain silent until one stood before the judge was turning into something like an obligation to pipe up on demand. In practice, the difference was not earthshaking, mostly because for many years reformers were careful to retain the controls on *what* lawyers could ask.

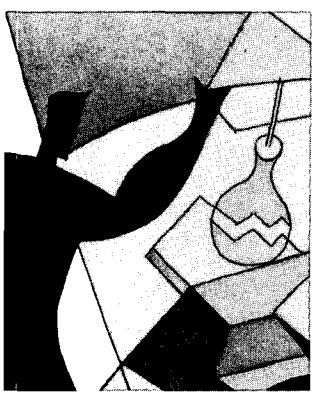
The more discovery lawyers were allowed to do, the better they seemed to like it. The legal thinkers of the New Deal were quite smitten with its virtues. It averted the need to draw out laboriously at trial facts that could be agreed on earlier. Unleashing wider discovery, they solemnly predicted, would

make litigation even more efficient. The sooner lawyers learned the truth, the cheaper they would find it to prepare their cases, and the more likely they were to settle.

In 1938, the Roosevelt administration devised the first unified code of procedures for federal courts. The new Federal Rules of Civil Procedure, which continue in modified form to this day, helped touch off America's eventual litigation explosion. Earlier rules, by and large, had discouraged people from filing lawsuits unless and until they were sure the facts would back them up. The new spirit could be described as one of "sue first and verify later." Under the modern rules, to quote Yale law professors Fleming James, Jr., and Geoffrey Hazard, Jr., "persons who may not know *whether* or how they were wronged" [emphasis added] can sue without apology or explanation.

NO ONE WANTED TO SEND ALL those suits-on-suspicion to trial. And so the legal system would have to provide some way for eager litigants who hoped they had a valid claim to "use discovery to find out—the 'fishing expedition,' " as James and Hazard put it. And the 1938 rules opened up a new and unprecedented scope for such expeditions.

The logistics differed little from those of the earlier codes. Lawyers could demand oral and written disclosures without a court's say-so for purposes of frank discovery. The great difference was in what they could ask. University of Michigan professor Edson Sunderland, who drafted the new discovery procedures, began by tossing out the own-case-only rule. Moreover, the questions no longer had to be relevant to the issues actually in dispute, so long as they related somehow to the litigation's *subject matter*, whatever that might mean. This allowed no end of probing on matters that were not being raised as a legal issue or had already been fully conceded. More astounding, lawyers could demand hearsay, opinion, or other information that was *not* admissible at trial, so long as they could argue that it might lead them to other facts that they could use at trial. Before 1938 a few questions were clearly permitted and most others were out of bounds; afterward, the litigators could venture broadly, save for a few shrinking areas of privacy protection ominously labeled "privilege."



In 1987 a judge ordered Wyeth Labs to set up a research library for the convenience of the lawyers suing it.

"Anything goes," complained California lawyer Moses Lasky. "Attorneys must inquire into everything and prepare for everything, because no court will tell them where to stop or permit them to stop an adversary. The waste of time and money is immense."

In one early case federal judge Robert Gibson ordered the plaintiffs in a 1942 Pittsburgh business squabble to stop their "oppressive" badgering of Margaret Bultman, secretary to the president of a railway company, after her deposition had reached 1,000 transcript pages. The judge said that in perusing the transcripts, with their "constant repetitions of matters incompetent for admission in evidence," he had "progressed from interest to boredom, and thence to a certain amount of shock....Granting that [the discovery rule] has a tendency somewhat to encourage fishing expeditions, still the fishing is subject to some license and limit, and should not be continued day after day when the catch is composed of minnows."

Nowadays, a 1,000-page transcript is nothing special. Former California bar president Dale E. Hanst recalls a construction contract case where the deposition of one side dragged on for 20 days. In the now-common lawsuits with multiple parties, the targets may have to go through the process for one set of lawyers after another, which in no way relieves them from going over the same ground again at trial. Of course bystanders face these ordeals too; deposing third-party celebrities has become a regular tactic, especially when publicity seeking is part of one side's strategy.

In antitrust cases lawyers will often conduct hundreds of depositions probing a defendant business's entire course of behavior over decades. Nicholas deB. Katzenbach, who was house lawyer at IBM during many of the years it spent fending off antitrust suits, has said the company's chief executive was deposed by private and governmental adversaries for a total of 45 days. "In one of the last depositions, which was 11 years into the case, and two or three years after the government rested, the questions asked clearly indicated that the attorneys involved had never read any of the earlier depositions." Among the questions: "When did you become chairman?" "Where is the corporate office of IBM?" "What is the approximate size and square feet of the facility in Poughkeepsie?"

When ordered to a deposition you had better hop to it, or you risk very real sanctions. A Texas lawyer pressing a slip-and-fall case against Wal-Mart Stores had the bright idea of demanding a deposition from billionaire Chairman Sam Walton, the retail magnate whose time is arguably as valuable as any businessman's in America. Walton dragged his heels in making it to scheduled appointments, and a state judge in Fort Worth proceeded to order his company to pay a fine of $11,550,000 for this insult to the law's majesty—as well as the $36,000 that a jury had awarded for the slip-and-fall injury itself.

The most common objectives in depositions include ensnaring the witness in contradictions, getting him to agree to phrasings that hurt his side's case, and drawing out weaknesses in his character and demeanor for later attack. A key objective is to show

that the lawyer is the one in control. One leading handbook advises that a simple way to get this message across is for the lawyer to ignore any questions the witness may try to ask.

James Jeans, a former board member of the Association of Trial Lawyers of America, has put the point ever so delicately in his handbook on litigation: "There is no judicial officer in attendance so the ground rules are often established by the more forceful personality." Judge Richard Posner of the Seventh Circuit U.S. Court of Appeals is more blunt: "The transcripts of depositions are often very ugly documents."

WRITTEN INTERROGATORIES, BY CONtrast, might seem like a relatively calm and civilized mode of confession. The propounder gets to ask questions that cannot be answered from memory. The target has time to draft a considered response (in practice his lawyer does it), so there is less danger that a careless phrasing will do mischief. And while depositions call for the coordinated presence of meeting space, lawyers with their ticking meters, stenographers or video cameras, notaries, and whatnot—not to mention advance coaching sessions—the medium of the interrogatory is seemingly as cheap as paper.

But the yours-for-the-asking cheapness of procurement brings its own distinctive risks of abuse. These questionnaires can take minutes to draft and weeks to answer. On one side, a $15-an-hour paralegal downloads the questions from a disk of standardized "pattern interrogatories." On the other, a team of top lawyers scrambles to draft a response after an exhaustive file search and discussions with engineers, hospital administrators, or actuaries. Los Angeles lawyer Richard Field observes that a discovery lawyer is "perfectly content to ask General Motors if it has ever received a claim pertaining to a faulty headlight before and if so, to answer twelve subquestions as to each such claim."

The requesting lawyer may have to pay minor copying costs, but otherwise there is little reason to go easy on the adversary. An extra 100 pages of responses, thumbed through in an idle moment, might yield a welcome nugget. In one big securities case the target received a set of interrogatories 381 pages long. Lawyers ultimately gained 150,000 pages of deposition and testimony transcripts in this case. Formbooks and disks bring imposition within the reach of the humblest lawyer: One compendium of "pattern interrogatories" for filing in medical malpractice cases goes on for 955 densely packed pages.

Some requesters don't even bother to put their cut-and-paste questions in consecutive numerical order, let alone make sure all of them are pertinent. Atlanta lawyer Edward Savell, representing a taxi company after an accident, recalls being asked where the company learned to drive, whether it had a driver's license, whether it was married or divorced, and whether it had any children. In a Maryland case, the form questions asked whether it had snowed on the day of an accident in July.

The safeguarding of private papers and correspondence from arbitrary search and seizure has had a long and honorable history in this country and before that in England. Even the 1938 rules protected for this dimension of privacy. Lawyers who wanted to demand documents from their opponents had to designate what they wanted with clarity; they had to show a judge good cause beforehand; and the relevance and admissibility of the matter had to be plain.

The litigation lobby devoted years of effort to battering away at this remaining protection. Why, they asked, should no-doubt-incriminating documents sit untouched in files forever simply because a lawyer couldn't request their contents precisely enough or demonstrate their relevance in advance to a judge? The key to nailing the world's malefactors, they maintained, was to lay open the secret memos in which they plotted their nefarious designs. A thousand crimes long shrouded in obscurity would be cleared up. They repeated like mantras their soothing assurances that the innocent had nothing to fear; nor were they above hinting that those who wished to avoid releasing their papers must have something to hide.

In 1970, they got their way. The federal government amended its rules of civil procedure to allow litigators to demand any private papers they had a mind to. The onus was now on the opponent to trouble the judge with an objection. And to cut down on those pesky objections, the revisers dropped the rule that a demand had to be backed by good cause.

Document requests soon became a major hub of litigation in themselves. In the first five years of the IBM antitrust litigation, lawyers obtained 64 million pages of documents. Los Angeles lawyer Ronald Olson recalls a case in which his client spent nearly $2.5 million responding to discovery demands as a third party, not a litigant.

Then began the format wars. A lawyer in a liability suit against Sears demanded to see all customer complaints relating to a particular product. Sears kept its immense files of consumer correspondence organized not by product but alphabetically by individual, to provide quick turnaround in customer service. In desperation Sears offered to fly the lawyer to Chicago, plop him down amid the file cabinets, and let him browse at will. No cigar: He wanted Sears to do the compiling. A federal judge agreed. The judge didn't deny that Sears had good reason to arrange its filing system the way it did, but declared that allowing it to plead impracticality would encourage other companies to set up their files deliberately to repel discovery.

The next step came in 1978 when a judge ordered a target company to create a computerized data bank for the convenience of the lawyers suing it. And in 1987, a judge ordered Wyeth Labs to establish a special research library for the more than 200 lawyers who were suing it over the alleged side effects of vaccine formulations fully approved and endorsed by federal authorities. The judge explained that Wyeth need not fear the disclosure of its internal operations to competitors because it had already—under litigation pressure, not from lack of support in the medical community—pulled the vaccine off the market.

The hope that expanded discovery would cut the cost of litigation was abandoned early on. Advocates had promoted discovery as a way to dispose of unfounded suits and arguments; it quickly emerged as a way to prospect for more and

wider legal claims. Cases settle before trial at no higher a rate here than in Britain, which has kept up strong protections for pretrial privacy. A major 1968 study by academics highly sympathetic to the new order conceded that it "does not appear to save substantial court time. On the evidence we obtained discovery cannot be called an efficiency-promoting device."

ONE REASON DISCOVERY IS SO EXPENsive is that garnering data relevant to a client's case is only one of its objects and often a minor one at that. A favorite catch is data on the opponent's fiscal situation. A Legal Services Corporation internal manual for litigators explains that the chance to obtain "information about a person's financial resources and ability to withstand certain sorts of losses" may be "one of the most important reasons you want to go to court." How well a defendant is insured, for instance, is seldom relevant to the merits of a case against him but highly relevant in extracting top dollar in settlement.

Competitors, unions, and pressure groups love to rummage among the accounts, customer lists, engineering memos, and board minutes of the companies they sue. "Executives who keep little notebooks with scribbles in them are asking for trouble," says Miami lawyer Lawrence Bemis. "One of the first things a good litigator does is ask to see them." In some cases the secrets sought are more important than the relief, and one observes an odd negotiating posture: The defendant offers to pay the full value of the claim, but the cagey plaintiff refuses to hear of it.

Divorce lawyers routinely demand that opponents submit to examinations by hostile psychiatrists.

Along with the rest of its bounteous harvest, the fine-meshed discovery net hauls to the surface a great many curious and wriggling creatures from the lower depths. It's standard in discovery to probe for intimate or embarrassing revelations that a target wouldn't want to come out at trial. Divorce and custody lawyers now routinely demand that their opponents submit to examination by a hostile psychiatrist and to hair, blood, and urine tests that might turn up signs of drug abuse or the AIDS virus. Such physically invasive measures still require advance court permission, but in line with the spirit of the rules judges seem to resolve doubts in favor of more inquiry.

The late Supreme Court Justice William O. Douglas warned of the dangers of leaving people at the mercy of medics hired by their adversaries, with no one present "to stop the doctor from probing this organ or that one, to halt a further inquiry, to object to a line of questioning." But Douglas expressed those libertarian scruples in a dissent. The majority declared it perfectly proper to turn a litigant over to examiners who would search on a clinic table for physical or mental frailties that might have led him to be negligent.

The shadier sorts of lawyers have long fed pretrial tidbits to scandal sheets or reserved them for outright blackmail. Such abuses may be inevitable on the tortured fields of family law, where courts regularly probe the most personal issues. But the discarding of the old discovery controls has allowed them to blossom forth in many other types of litigation as well.

ONE HALF-PROTECTION REMAINS FOR the privacy of tax returns, trade secrets, and love letters: The disclosing party can ask the judge to order the opposing lawyers not to release them to outsiders. The granting of one of these "protective orders" is little comfort, of course, if the real goal of the opponents is to get their hands on the material for their own future use. And unsatisfactory as it is, even this degree of protection has been hard to achieve in practice. Where many lawyers in a suit get to see the same documents, as is common these days, the cheater who leaks the material to a tabloid or business competitor may leave no fingerprints.

"If you are not bound by the oath of confidentiality and get hold of the materials, you cannot be held civilly or criminally liable for releasing the materials," the Legal Services manual notes helpfully. It explains that any "juicy tidbits" from discovery "can be plastered on flyers or posters" later on. "Discovery items need not be used in total; they can be excerpted for dramatic effect."

Incidentally, if the target successfully resists coming across with his tax returns, the manual for these federally funded lawyers says the thing to do is "cultivate relationships" with "divorced or estranged spouses" who "have greater access to this information than any other person."

Another LSC training program puts it this way: "The opposition may seek a protective order to tone down your aggressiveness in using discovery. You may be barred from giving information thus gathered to the [advocacy organization with which you are working]. You cannot be barred from giving information to your clients. What your clients do with the information (i.e., give it to their organization) is their business."

For whatever reason, confidentiality breaches routinely go unpunished, and many a target organization that summarily wins the underlying lawsuit loses the war for its privacy. Inevitably, some lawyers now argue that this is really a good thing, that lawyers should routinely enjoy authority to release pretrial data to the general public even when the case never gets to a trial. Why make other lawyers go to the trouble of requesting the same items when the litigation community could share the findings so much more efficiently? Why not treat the public to any details unearthed through allegations of private miscon-

duct, whether those allegations prove well-founded or grossly unfounded? A few judges, in line with these views, are predisposed against granting protective orders at all. And ATLA, the plaintiff-lawyers' lobby, has launched a public campaign against protective orders; the Texas courts in 1989 cooperated by making it far harder for the victims of discovery in that state to preserve confidentiality.

Every discovery excess is in the end based on the same rationale: the search for the totemic, Grail-like "smoking gun." But it's a funny thing about smoking guns. Given a big enough file cabinet to search in, or a long enough list of questions to ask a single parent, a lawyer willing to spend some time at it can quite often find something that can be portrayed as the fabled firearm. Were there harsh words in the dismissed worker's personnel folder? That shows the managers were prejudiced against him. Were there kind words? That shows they couldn't have been displeased with his job performance. Were others fired in the same circumstances? Then this employer has made a habit of trampling workers' rights, and a large punitive award is needed to mend its ways. Were other workers let off with warnings? Then this victim was singled out for arbitrary treatment and deserves to win.

Any experienced advocate can play these games. Among the favorite smoking-gun generators are memo debates or unheeded suggestions within an organization. The sought-after memo will advise the hotel to dismantle the diving board, the brokerage to go easy on the risky investment, the magazine to kill the hard-hitting investigative story, the hospital to close down the vaccination program that has attracted malpractice suits.

The great advantage for discovery litigators, at least until the system adjusts to the loss of privacy, is that they get to browse among letters and memos written long before, with no thought of litigation. These are far more likely to mortify in retrospect than the considered words of persons who know what they say will be held against them. No long-forgotten scratch-pad doodle or marginal comment on a while-you-were-out slip is now too obscure or insignificant for lawyers to seize and triumphantly decode as evidence of bad faith.

Especially dangerous are the banter, devil's advocacy, and striking of attitudes that seem inseparable from professional camaraderie. The trap for the unwary, the source of surprise in litigation, has now become life itself, and the everyday instinct to record and comment on its events. Advocates promised that discovery would be calmer and more rational than the "ambush" of revelations at trial. It emerged as a source of mingled dread and ennui, a reign of terror combined with a rain of paper.

THE POWER TO EXTRACT CONFESSIONS and inspect private correspondence has long appealed to a certain type of ambition. Were it used without restraint, a certain type of justice might be very well served for a time. Every diary, dossier, and archive would be thrown open to inspection. Each of us could be made to answer questions about our past deeds and thoughts and whereabouts, with our answers cross-checked against those of our boon companions and partners in mischief, with a new round of questioning to follow, as in a well-run prisoner-of-war camp, boys' boarding school, or ecclesiastical body for the suppression of heresy. Many long-suspected sins and scandals, and others not even suspected, would at last be brought to light, and the reign of the saints would be complete. The human race would walk around with a perpetual blush on its face, as perhaps it ought.

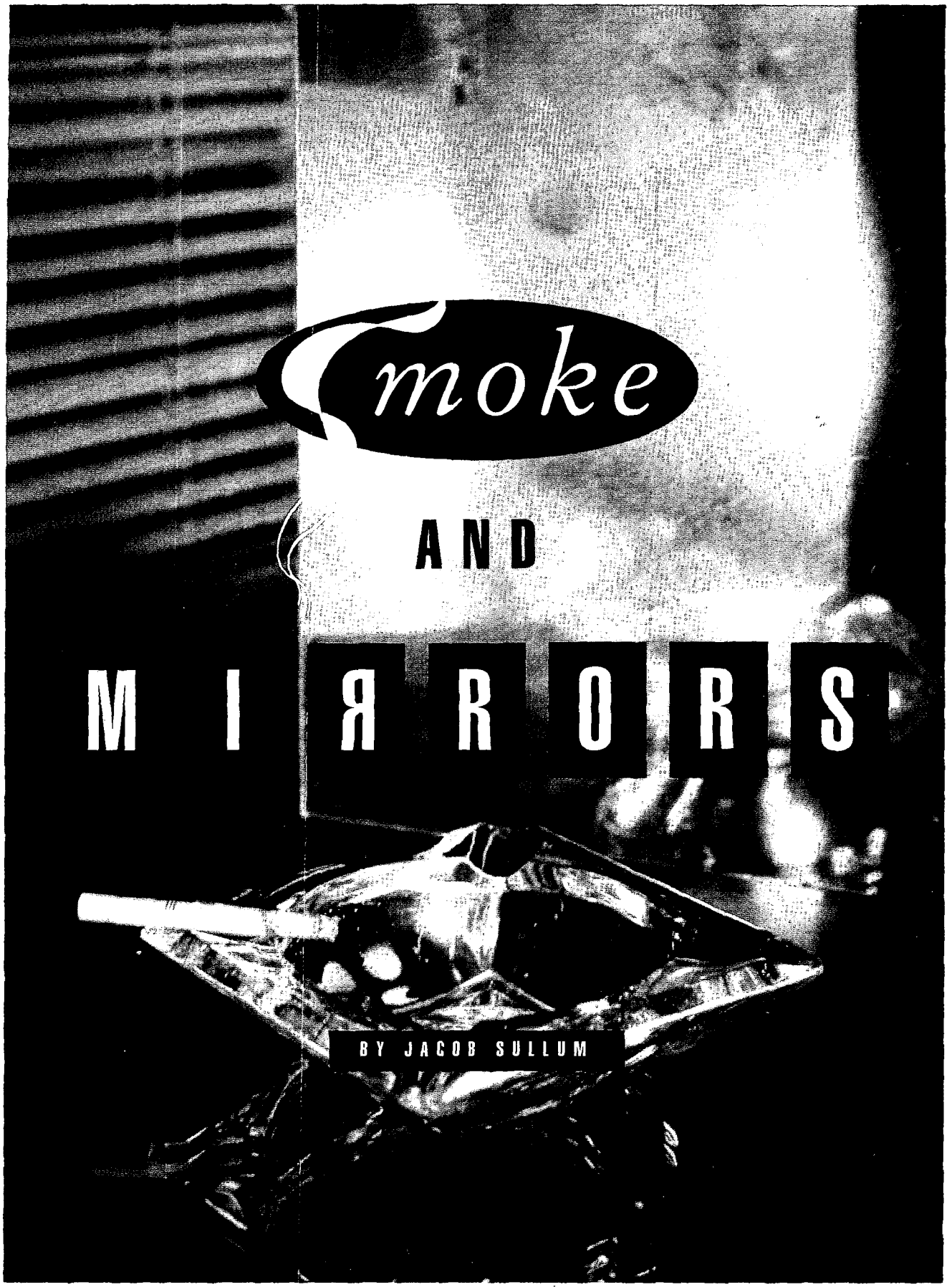
Few of us would want to live in such a world for long (though we might consent to hang around for the first thrilling revelations). We value our privacy, although we wish we could change the guilty habits it shields; we respect the privacy of others, although we know it sometimes conceals real wrongdoing. Then, too, we fear that no one could be safely entrusted with the power of the inquisitor. We would never in this country entrust such a power to the public magistrate, even in a time of emergency and civil disorder. It would too obviously be a weapon of tyranny. And yet somehow we entrust it to private lawyers who use it for private profit.

But not against each other. In the landmark 1947 case of *Hickman* v. *Taylor*, Hickman had the impertinence to ask, not for the list of prescription drugs his opponents took, not for the telephone logs from their private residences, not for the diaries they had kept since childhood, but for some of the output of their *lawyers*—specifically, memoranda and deposition transcripts. All the well-worn arguments about making sure both sides have early access to information, about saving on redundant expense, about avoiding surprise at trial would seem to have been at their very strongest here. But the Supreme Court rebuffed Hickman's request. It declared a bulletproof discovery privilege for lawyers' own work.

The reasoning of the Court's *Hickman* opinion merits careful study. "It is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel," the Court pointed out. "Were such materials open to opposing counsel on mere demand," it added, "much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own." The consequences of this loss of privacy would soon follow. "Inefficiency, unfairness, and sharp practice would inevitably develop" in lawyers' everyday work. "The effect on the legal profession would be demoralizing."

The breaching of the "heretofore inviolate," the dangers of proceeding on "mere demand," the risks that frank opinion would no longer be set to paper, are compelling concerns, no mistake about it. Too bad they didn't loom equally large when it came to the professional confidentiality of accountants, university tenure committees, adoption workers, and consulting psychiatrists. The demoralization of the legal profession was avoided, and a narrow escape it was. The demoralization of everyone else was allowed to proceed apace. ■

Walter Olson is a senior fellow at the Manhattan Institute. This article is adapted from his forthcoming book, The Litigation Explosion: What Happened When America Unleashed the Lawsuit *(E.P. Dutton/Truman Talley Books).*



BY JACOB SULLUM

A.M. REIBSAMEN

In the banquet room of a Mexican restaurant in Southern California, a man and a woman each light a cigarette after finishing their meal. A diner sitting next to the couple picks up a menu and begins to wave it ostentatiously, as if to clear away the smoke. The couple ignore him for a while, although his message is clear. When he persists, they glare at him. But then a funny thing happens. They get up and walk to the back of the room, where they stand for the rest of the evening.

The entire altercation is conducted in silence, but the hostility is palpable. Both the couple and the man who objects to their smoking are indignant. Yet they do not ask the manager whether smoking is permitted in the banquet room. Neither do they try to reach a compromise by redirecting the smoke or rearranging seats. Instead, the smokers simply give in.

The episode is particularly striking because it takes place at a meeting of a libertarian supper club. These are people who might argue about whether your neighbor would violate your rights by keeping a nuclear warhead in his garage. Yet confronted by a much more practical controversy, they are struck mute.

Tobacco smoke seems to have a peculiar ability to obscure issues. Perhaps no other personal habit generates as much acrimony as smoking, and the conflict has resulted in measures that go far beyond banishing smokers to the back of the room. Government limits the marketing and advertising of tobacco, taxes its sale, and regulates its use. A vocal antismoking movement, including legislators and public-health officials as well as private advocacy groups, is pushing for further antitobacco measures, including a ban on advertising, higher excise taxes, and the prohibition of smoking in "public places."

Some recent signs of the movement's success:

- Last year, Congress banned smoking on virtually all domestic airline flights.
- Last fall, San Luis Obispo, California, became the first municipality in the country to adopt a comprehensive ban on smoking in businesses.
- In New York City last October, the city council passed a ban on cigarette vending machines, exempting bars only.
- The latest plan to reduce the federal deficit raises the excise tax on cigarettes to 24 cents a pack, a 50-percent increase. This is probably the least controversial element of the budget package.
- In California, the state is using $28.6 million from a 25-cent-a-pack increase in the cigarette tax to fund an advertising campaign that depicts smokers as inconsiderate slobs and cigarette manufacturers as gleeful murderers. In effect, the government is forcing smokers and tobacco companies to pay for their own vilification.

The antismoking movement draws its strength from its ability to portray smoking as a threat to everyone. Although some activists, especially in the national health organizations, stress the impact of tobacco use on smokers, most justify restrictive measures by citing the alleged effects of smoking on the general population.

"We're not trying to protect the smoker from himself," says Ahron Leichtman, president of Citizens Against Tobacco Smoke, one of the main groups that lobbied for the airline smoking ban. "We're trying to protect the nonsmoker from the smoker."

John Banzhaf, executive director of Action on Smoking and Health, says he is mainly concerned with making sure that smokers bear all the costs of their behavior. Although ASH supports restrictions on advertising, he says, "it does not mean we're paternalistic."

Under the guise of protecting public health and guarding the rights of nonsmokers, antitobacco activists impose their personal preferences on those who are less health-obsessed.

Activists who genuinely adhere to this position are fooling themselves and misleading others in the process. The antismoking movement is, in fact, profoundly paternalistic. It does not trust people to make their own choices about smoking—neither whether to do it nor whether to tolerate it. Under the guise of protecting public health and guarding the rights of nonsmokers, antitobacco activists seek to impose their careful habits on those who are less rational, less educated, and less health-conscious.

The movement's paternalism is clearest when activists talk about cigarette advertising: They say the government must protect consumers, especially members of "vulnerable" groups, from the influence of such messages. In the campaign against smoking, freedom of speech is a mere hindrance.

The Coalition on Smoking OR Health, a joint project of the American Heart Association and the American Lung Association, favors a complete ban on tobacco advertising, which Rep. Mike Synar (D-Okla.) has also proposed. ASH's Banzhaf, who filed the FTC complaint that led to the 1971 ban on TV commercials for cigarettes, favors restricting ads to "tombstone" messages—text only. A bill authored by Rep. Henry Waxman (D-Calif.) would allow pictures of the product but no other illustrations. It would also prohibit tobacco companies from sponsoring athletic, musical, or artistic events.

Banzhaf, a law professor at George Washington University, believes such restrictions—even a complete ban—would hold up in court, given precedents in other industries. He cites the heavy restrictions on the advertising of prescription drugs and of stocks and bonds. He notes that the Supreme Court has

repeatedly held that "commercial speech" receives only limited protection under the First Amendment. Furthermore, in a 1986 case upholding Puerto Rico's authority to ban casino advertising, the Court declared that if the government has the power to prohibit an activity, it also has the "lesser power" to prohibit advertising of the activity.

The commercial/noncommercial distinction opens a dangerous loophole in the First Amendment. In the May 1990 *Virginia Law Review*, Alex Kozinski, a federal judge on the Ninth Circuit Court of Appeals, argues that it's impossible to come up with a definition of commercial speech that makes sense in light of the Supreme Court's decisions. The two properties that supposedly underlie the distinction—durability and objectivity—are no more characteristic of what has been called commercial speech than of fully protected speech. Even if they were, the relevance of these characteristics is not clear. Furthermore, some messages, such as movies and "advertorials," blend advertising with other forms of speech.

Antismoking activists have an almost mystical faith in the power of advertising to recruit new smokers, especially from "vulnerable" groups, which seem to include most of the population.

Kozinski argues persuasively that there is no coherent, constitutionally plausible way to protect art, journalism, and scientific debate without also protecting the kinds of speech the Court has labeled commercial. The commercial-speech doctrine, he writes, "gives government a powerful weapon to suppress or control speech by classifying it as merely commercial. If you think carefully enough, you can find a commercial aspect to almost any first amendment case."

First Amendment issues aside, it's not clear what the point of further restricting or banning tobacco advertising would be. Antismoking activists object to the use of fun, healthy, sexy, and youthful imagery in cigarette ads. "You could make a very good argument that advertising of tobacco products is in fact misleading, that the images and the kind of messages they contain are contrary to what the product does," says Scott Ballin, head of the Coalition on Smoking OR Health.

By this standard, virtually all advertising is misleading. After all, Sure doesn't actually make you confident and secure; Closeup doesn't really attract members of the opposite sex; and Dr. Pepper doesn't truly enable you to hit a home run or shoot a perfect game of pool. Most people take such implicit messages with a grain of salt.

But Banzhaf and other activists worry that not everyone does. "The Federal Trade Commission has long recognized that the true test of whether an ad is deceptive is not the above-average consumer—you and me," he says. "It is not even the average consumer, but in many cases the most vulnerable person." In the rhetoric of the antismoking movement, "vulnerable" consumers seem to include most of the population. At one time or other, activists and public-health officials have objected to advertising that appeals to women, minorities, the poor, the young, and the undereducated.

Last year, R.J. Reynolds canceled plans to market Uptown cigarettes, a brand aimed at blacks, after sharp criticism from Secretary of Health and Human Services Louis Sullivan. Later, commentators roundly denounced the company after it announced plans for Dakota, a brand aimed at young, working-class women. Early last year in Chicago and New York City, antismoking vandals went on whitewashing sprees in black neighborhoods, defacing cigarette billboards.

"I don't think there's an objection to niche marketing as such," Banzhaf says. "The objection is to picking the most vulnerable segments of society and trying to take advantage of their vulnerabilities. I don't think anybody would object if Philip Morris came out tomorrow with a cigarette they wanted to market to doctors or university professors or magazine writers."

A tone of conspiratorial elitism creeps into Banzhaf's comments as he explains why certain groups are more susceptible to cigarette advertising than others. He repeatedly distinguishes between people like him and me—"university professors or magazine writers"—and those "vulnerable segments."

"People with less education find it more difficult to understand how things can be proven from a statistical point of view," he says. "It's more difficult for them to perceive that activities that they're engaging in every day which don't hurt—like smoking or overeating—can in fact be very dangerous....Secondly, we know that they have much more difficulty taking the next step—that is, the leap from understanding generally that there is a danger to personalizing it....[And] the poor seem to be less subject to beneficial social pressures to do things which are healthy."

It's easy to get caught up in these observations from social psychology—there is even research to prove them!—while forgetting the proposed application. Although each of these generalizations may be true in some sense, it's clearly not the case that you need courses in statistics and epidemiology—or a college education, for that matter—to understand that smoking can be bad for you, any more than you need a degree in nutritional science to know that you should eat your vegetables.

But antismoking activists have an almost mystical faith in the power of advertising to recruit new smokers by glossing over all that nasty stuff about lung cancer and heart disease. "It's very difficult to prove that advertising has an effect," Ballin says, "but everybody knows that it does, [although] people don't want to admit that it has an effect on them."

In response, tobacco companies claim they don't want to

encourage smoking. This is odd, to say the least. They're on firmer ground, however, when they argue that advertising has little impact on smoking. Tobacco Institute spokesperson Brennan Dawson notes that cigarette consumption has been declining by 2 percent to 3 percent annually in recent years. Tobacco is a "mature product," she says, so advertising focuses on reinforcing brand loyalty and convincing smokers of other brands to switch. "You pass a point where you can't go out there and encourage overall consumption of the product—it wouldn't be cost-effective."

Thomas Schelling, director of Harvard's Institute for the Study of Smoking Behavior and Policy for six years and now a professor of economics and public policy at the University of Maryland, tends to agree. "I've never seen a genuine study of the subject," he says. "Most of the discussion I hear—even the serious discussion—is about as profound as someone saying, 'If I were a teenage black girl, that ad would make me smoke.' I just find it altogether unpersuasive....I've been very skeptical that advertising is important in either getting people to smoke or keeping people smoking. It's primarily brand competition." Therefore, the main effect of an ad ban would be to freeze market shares, preventing new and possibly safer brands from gaining acceptance.

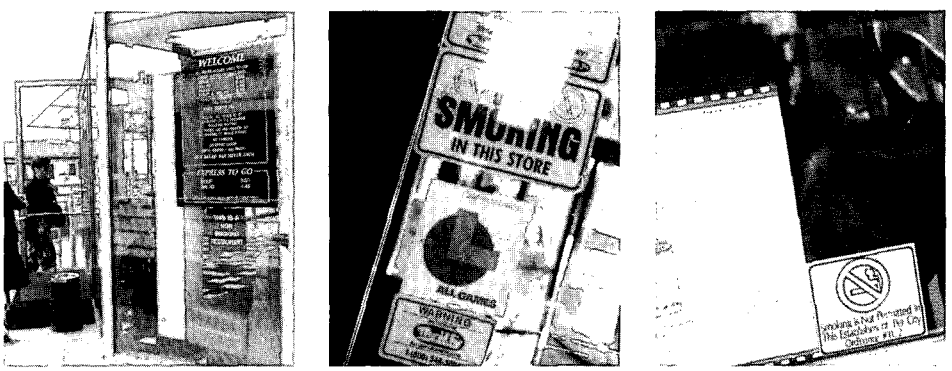
Given the dearth of evidence, the campaign against cigarette advertising seems to have little to do with reducing smoking. "I think it's partly that the people in the antismoking movement really despise cigarette companies and despise the advertising companies" that work for them, Schelling says. "They are offended by what the enemy is doing rather than evaluating its effectiveness."

Similarly, the arguments for taxing tobacco are based on emotion more than fact. The idea of a "sin tax" has broad appeal, particularly among those who do not enjoy the sin in question. To justify such an extremely regressive levy, however, advocates of higher excise taxes must appeal to more than the nonsmoking majority's visceral disapproval of tobacco use. They have to argue that the cost of smoking to nonsmokers goes beyond the pain of moral or aesthetic revulsion.

Banzhaf, who thinks the tax on a pack of cigarettes should be about $2.75, says that "the total cost of smoking to the American society" is somewhere between $50 billion and $100 billion a year. As the range of estimates suggests, these numbers are very soft. They are supposed to include the costs of lost productivity, smoking-related fires, and extra medical care. But no attempt is made to distinguish costs borne by smokers and costs borne by others voluntarily from costs imposed on others.

Even if you accept the sloppy reasoning behind such "social cost" calculations, it appears that smokers are already paying their way. A 1989 study by the Rand Corp. found that the state and federal excise taxes on cigarettes—which, together with sales taxes, represent 25 percent to 55 percent of the retail price—are sufficient to cover the net costs of smoking. The researchers noted that smokers tend to die early, thereby reducing the need for nursing-home care and demands on Social Security and pension funds.

Superficially, the arguments for restricting smoking in businesses open to the public seem stronger than the arguments for banning advertising or raising excise taxes. Leichtman, president of CATS, would like to see smoking prohibited everywhere except in residences. "The problem of nonsmokers being forced to breathe second-hand smoke should not be treated as a mere nuisance to be resolved by good manners, courtesy, and restraint," he writes in *USA Today*. "It should be treated as a severe threat to life and health, requiring government action."



L.A., LEFT, still leaves restaurateurs some leeway to set smoking rules. San Luis Obispo, CENTER & RIGHT, bans smoking in all businesses.

The idea that tobacco smoke is not just an annoyance, but a hazard as well, rests on evidence concerning the effects of "involuntary smoking." The term itself is misleading, since it implies both that a nonsmoker's exposure is analogous to a smoker's and that the nonsmoker has no choice in the matter. It conjures up the image of a person being tied down and compelled to smoke a pack of Camels.

Yet breathing environmental tobacco smoke (ETS)is quite different from smoking. The chemicals in the smoke are diluted by the surrounding air, and a bystander neither inhales them as deeply nor retains them as long as a smoker. This distinction is often lost in the warnings of antismoking activists.

"We know that tobacco smoke causes disease and can kill you," Ballin says. "It makes sense that a person who doesn't smoke cigarettes, who's sitting next to a smoker and inhaling the smoke, is also at some risk." But many substances that are toxic at certain concentrations—vitamin A, for example—are benign or even healthy at others. So this "common-sense" approach will not do.

The actual evidence on environmental tobacco smoke is considerably less solid than antismoking activists make it out to be but more convincing than the tobacco industry might like you to think. To put the question into perspective, consider that

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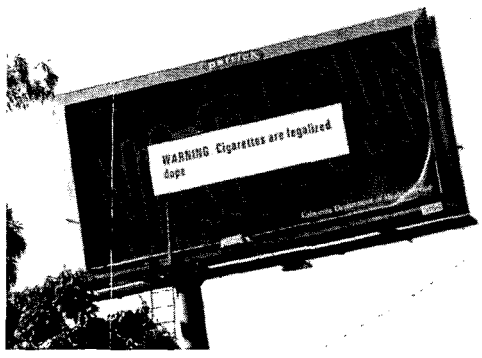
there have been thousands of studies on the effects of smoking. By contrast, only 25 have looked at the consequences of ETS exposure.

Of these, six have found that exposure to ETS can increase the risk of disease in nonsmokers—primarily lung cancer in the spouses of smokers. The results of the other studies were either negative or statistically insignificant. (The Environmental Protection Agency has attempted to derive significant findings from these data, but it's not clear whether the aggregated studies' populations were comparable.) In 1986, then-Surgeon General C. Everett Koop concluded that "involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers."

Yet the detailed discussion in the surgeon general's report has a more cautious tone, citing shortcomings in the research. The studies may not have controlled for all the relevant variables. Socioeconomic status and indoor pollutants, for example, are both associated with lung cancer. Furthermore, some of the subjects may have been misidentified as nonsmokers, since the researchers relied on questionnaires to classify them. Because the spouses of smokers are more likely to be smokers themselves, misidentification of even a small percentage of the subjects would have been enough to skew the results.

The only study to find an increased risk for children raised in homes with smokers was reported in *The New England Journal of Medicine* last year. The study compared the childhood exposure of 191 lung-cancer patients to that of 191 people without lung cancer who had never smoked. Yet although the lung-cancer patients were classified as "nonsmokers," they explicitly included former smokers.

California has added cigarette-tax-funded messages, TOP, to private anti-smoking ads, BOTTOM.



Even if we take the link between lung cancer and spousal smoking to be established, we should keep the possible risk in perspective. Being married to a smoker may raise your likelihood of developing lung cancer, but this likelihood for nonsmokers is very small to begin with.

It's also important to recognize what the research does not show. Beware of claims that ETS kills thousands of Americans each year. At the Seventh World Conference on Tobacco and Health last April, for example, a researcher estimated that secondary smoke each year causes 34,900 additional deaths from heart disease and 12,600 additional deaths from cancer in the United States.

Yet a link between ETS and heart disease has never been demonstrated. In Koop's words: "Further studies on the relationship between involuntary smoking and cardiovascular disease are needed in order to determine whether involuntary smoking increases the risk of cardiovascular disease." An international symposium at McGill University reached a similar conclusion in November 1989. Furthermore, estimates of additional cancer deaths are purely hypothetical, since none of the ETS studies have measured actual exposure to secondary smoke.

Even if they had, it isn't clear that the results would be representative of the average American's exposure or that the dose-response relationships derived from the studies would apply to the general population. Koop again: "...more data on the dose and distribution of ETS exposure in the population are needed in order to accurately estimate the magnitude of risk." So the additional-death figures are about as reliable as Mitch Snyder's estimate of the homeless population.

Although almost all of the evidence on the effects of secondary smoke relates to long-term exposure in the home, the research has been used to justify laws restricting or banning smoking in businesses. At least 44 states and hundreds of cities and counties have adopted such laws. Yet there is very little reason to believe that ETS exposure in the workplace is hazardous. And despite the impression given by antismoking activists, there is *no evidence* that casual, short-term exposure such as that encountered in a restaurant or on an airplane poses a risk to nonsmokers.

In any case, nonsmokers can always choose not to patronize those businesses that allow smoking. While the owner of the property has a right to establish rules for smoking, the customer has a right to go elsewhere. In addition to revealing the fallacy of "involuntary" exposure to smoke, consumer choice is crucial to the economic argument against government-imposed smoking regulations.

Restaurateurs, retailers, airlines, and innkeepers stay in business by accommodating their customers. If there is a demand for smoke-free dining, shopping, flying, or lodging, someone can make money by providing it. On the other hand, smokers also eat, buy things, go places, and stay in hotels, so businesses have an economic incentive to take their desires into account as well.

Similarly, businesses must compete for employees, and one way to attract and keep them is by providing them with the sort of work environment they want. In a free market, the smoking policies established by businesses will therefore reflect the preferences of consumers and em-

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ployees.

Leichtman accepts this argument, at least in part. "The marketplace does work," he says. But he argues that the tobacco industry has "brainwashed" restaurateurs into thinking they will lose business if they ban smoking and blinded them to the fact that they are already losing business by permitting smoking. Thus, he says, restaurateurs in Beverly Hills were deluded when they complained that they lost customers to competitors in Los Angeles after the city council enacted a restaurant smoking ban in 1987. (Los Angeles and San Francisco have considered similar ordinances.)

In addition to tricking restaurateurs into acting against their own interests, Leichtman says, the tobacco industry pressures businesses to allow smoking by threatening "economic boycotts." He cites Philip Morris's attempts to rally smokers against businesses that ban smoking. But aren't nonsmokers equally free to protest?

Too often, confrontations between smokers and nonsmokers are based on irreconcilable assumptions. Property rights make sense of the conflicting claims.

Maybe, Leichtman says, but they don't. "Very few people actually speak up about tobacco smoke, because they are just too plain timid," he says. "They don't want to be ostracized for doing so. The bottom line is they just don't complain." But given that nonsmokers outnumber smokers by nearly three to one, it's far more plausible that they don't complain because smoke simply doesn't bother them as much or as often as it bothers Leichtman.

Not every nonsmoker, after all, is an antismoker. Many nonsmokers would prefer a smoke-free environment if the government provided it to them without charge, at the expense of businesspeople and smokers. Relatively few, however, would be willing to pay for the privilege through higher prices or the effort (and perhaps embarrassment) of complaining or taking their business elsewhere.

"I'm the sort of guy who would pay a surcharge, if I had to, for a nonsmoking environment," concedes Leichtman, who says he's allergic to tobacco smoke. "I shouldn't have to." Why not? Ultimately, Leichtman retreats to the public-protection argument. "The owner of this building would not be permitted to have asbestos fibers falling from the ceiling....It stands to reason that the air should be relatively safe."

But tobacco smoke differs from asbestos fibers and other pollutants in several crucial ways. It is the byproduct of an activity that some customers (or employees) wish to engage in, and its presence is conspicuous and well-known. By entering a business that allows smoking, you consent to be exposed to tobacco smoke, just as you consent to be subjected to loud music by entering a dance club or attending a rock concert.

While loud music is not his cup of tea, Leichtman concedes that government has no business banning it. But he insists that tobacco smoke is different. He's right: Even relatively brief exposure to loud music is known to damage hearing, but no one has shown that casual exposure to tobacco smoke is harmful.

Clearly, though, the spread of antismoking ordinances throughout the nation is not merely the product of complaints by a few supersensitive individuals. Tobacco smoke in confined spaces has always been annoying, but tolerance for it has waned in this country with the spread of information about the dangers of smoking and the associated decline in the percentage of the population that smokes. This shift has changed the assumptions underlying relations between smokers and nonsmokers.

It's no longer safe to assume, in a home or a business, that the owner will not object if you light a cigarette. The onus is now on the smoker to find out what the rules are. It's still reasonable to expect diners to understand that they run the risk of exposure to tobacco smoke when they eat out. But as smoking becomes less and less common, restaurateurs may have to post signs to that effect in order to secure informed consent.

Customers should recognize that smoking policy is not simply an either/or proposition. Restaurateurs, for example, may choose from a wide range of ground rules, including a complete ban on smoking, separate seating, qualified permission (say, if no one objects), and prohibition (or tolerance) of complaints about smoke. Generally, of course, they will try to accommodate both smokers and nonsmokers.

None of this, however, changes the basic principle that the owner has the final say. Too often, confrontations between smokers and nonsmokers are based on irreconcilable assumptions: Smokers feel they have every right to enjoy their cigarettes, while annoyed bystanders are equally certain they are entitled to a smoke-free environment. The only way to make sense of these conflicting claims is by reference to property rights. Otherwise, the majority will simply impose a solution, which is what the antismoking movement advocates.

If you don't smoke, this prospect may not trouble you very much. You may be glad to be rid of tobacco smoke on airplanes and in restaurants, in stores and hotels, no matter how this state of affairs came about. For that matter, you may not care if you never see a tobacco ad again or if the cost of cigarettes goes up. Furthermore, you may be a clean-living, sensible person who can't imagine how any of your habits could possibly offend others enough to prompt government interference. But you never know.

As James M. Buchanan has noted, using the state's power to control your neighbor's annoying habits is a risky business. "Let those who would use the political process to impose their preferences on the behavior of others be wary of the threat to their own liberties," he writes. "The liberties of some cannot readily be restricted without limiting the liberties of all."

Jacob Sullum is assistant editor of REASON.

A Connecticutt court insists that Juliet Cheng's daughter, Shirley, undergo surgery to treat her arthritis.

What's Up to Doc

From emergency surgery to addiction therapy, courts are letting "the experts," rather than parents, decide what treatment to give kids.

BY STANTON PEELE AND ARCHIE BRODSKY

ON APRIL 8, 1986, DAVID AND GINGER Twitchell's 2-year-old son, Robyn, died of a bowel obstruction. Last July, a jury convicted the Boston couple of involuntary manslaughter.

As Christian Scientists, the Twitchells had chosen the spiritual healing offered by their church when their son took ill instead of taking him to a doctor. Their conviction has once again focused attention on the right of parents to decide what medical care, if any, their children should receive. The Twitchell case highlights the tension between parental rights and responsibilities, the conflict between religion and medical science, and the controversy over alternative forms of medical treatment.

In the last couple of years, prosecutors have had increasing success in winning felony convictions of Christian Scientists in cases like the Twitchells'. They have done so by bringing charges of manslaughter or child endangerment, bypassing laws in more than 40 states that exempt parents who rely on prayer from prosecution for child abuse or neglect. Simultaneously, a movement to repeal these statutes has been building in the news media and many state legislatures.

Christian Scientists ardently defend their choice of faith healing for their children as a constitutionally protected right. The American Academy of Pediatrics, on the other hand, insists that religious freedom ends where accepted medical practice begins. Dr. Norman Fost, former head of the academy's bioethics committee, has declared that the organization is interested not only in the rare cases where children die, but also in the hundreds upon hundreds of cases where children "suffer from inadequate medical treatment." This interest represents an ambitious effort to enforce mainstream medical decisions on parents over a wide range of health issues.

When do medical authorities have the right to overrule parental treatment decisions? At one extreme are cases like the Twitchells', in which medical treatment has been reliably demonstrated to be safe and effective, and the alternative to seeking treatment is dire, perhaps fatal. Removing obstructions

JOYCE DOPKEEN/NEW YORK TIMES PHOTO

of the bowels, treating infections such as pneumonia or meningitis, preventing infectious diseases by inoculation, and stabilizing diabetes are examples of treatments that fall at this end of the spectrum.

But many cases where we place our faith in medicine are not so clear-cut. These include situations where one's personal or cultural preferences may be scientifically valid and where the benefits of conventional therapy are uncertain. Part of the problem is the discrepancy between the true efficacy of many treatments and the claims made for them by medical interest groups. The state too often yields to the judgment of the most vocal and conspicuous treatment advocates, even when that judgment is no better grounded than the religious, cultural, or personal preferences of those they seek to coerce.

Consider the case in Connecticut of Juliet Cheng and her daughter, Shirley. Shirley was stricken with arthritis as an infant. Despite receiving a range of treatments, by age 7 she was confined to a wheelchair and in constant pain. A physician recommended that Shirley undergo surgery on her knees, hips, and ankles. Shirley's mother rejected this advice, choosing instead to take her child to China for less-extensive surgery combined with traditional folk treatments. But when she went to Newington Children's Hospital in Bridgeport last July for what she thought was a final consultation before the trip, the Department of Children and Youth Services charged her with neglect and placed Shirley indefinitely in state custody.

A juvenile court judge has approved the suggested operation, despite testimony that the procedure need not take place for two years. Cheng has appealed the decision in federal court. Carolyn Richter, an attorney who has filed a class-action lawsuit charging Connecticut's Department of Children and Youth Services with a pattern of arrogance and insensitivity, called the Cheng case "an example of the medical establishment deciding they have the truth of the matter and totally disparaging alternate forms of medicine."

PREGNANCY AND BIRTH, NOT TO MENTION ABORTION, HAVE been a major battleground in the conflict between personal autonomy and the state's interest in protecting life. Many court decisions have affirmed that Americans have a fundamental right of bodily integrity. For competent adults (including hospitalized psychiatric patients), this entails the right to refuse medical treatment. In fact, courts have ruled that the imposition of treatment without consent is a form of assault. But cases involving pregnant women, who are making decisions both for themselves and for their unborn children, are more complicated.

Organized medicine uses monopolistic strategies—professional, legal, and political—to counter the economic threat posed by midwives and home birth. In 1977, the executive director of the American College of Obstetricians and Gynecologists remarked that home birth constitutes "maternal trauma" and "child abuse." (See "Up Against the Birth Monopoly," September 1982.)

Yet studies published in leading medical and public-health journals have shown that, for comparable populations, the outcomes of birth at home and in freestanding birth centers are not significantly different from the outcomes of hospital births. It seems that the greater comfort some women feel when they give birth at home, coupled with the extra attention of relatives and attendants, compensates for the very small added risk involved in being away from the hospital.

In the last few years, the issue of coercive intervention during pregnancy has come to a head in the controversy over court-ordered Caesarean sections. A 1987 national survey found that, in 86 percent of recorded cases, judges intervened on the side of doctors who sought to operate on a fetus over a mother's objection. In 1987, a Washington, D.C., judge ordered a Caesarean section performed on Angela Carder, a woman facing imminent death from cancer. Doctors estimated her 26-week-old fetus had a 50-to-60-percent chance of immediate survival and an even lower chance of long-term survival.

The surgery was performed against Carder's apparent wishes as well as those of her family and her own doctors. The baby died within a few hours, and Carder died two days later. Her parents nevertheless appealed the judge's order, with the support of more than 100 briefs from women's organizations, medical societies, and leading bioethicists. In April 1990, the District of Columbia Court of Appeals ruled, 7-1, that neither pregnancy nor terminal illness justifies compelling a woman to undergo surgery. How well the judicial decision is implemented in regular medical practice remains to be seen.

IN CONTRAST, THERE HAVE BEEN SURPRISINGLY FEW LEGAL CHALlenges to the growing trend to force children into treatment for alcoholism and drug abuse. Although it goes under the name of medicine, this kind of therapy is actually a folk remedy with religious overtones. Researchers have never found that inpatient treatment based on the model of alcoholism as a disease is more effective than simple counseling. The head of the government's own National Institute on Alcohol Abuse and Alcoholism, Enoch Gordis, has declared: "In the case of alcoholism, our whole treatment system, with its innumerable therapies, armies of therapists, large and expensive programs...and public relations activities, is founded on hunch, not evidence, and not on science."

Aside from detoxification, most hospital treatment for chemical dependence in the United States is a thinly disguised repackaging of Alcoholics Anonymous's 12-step approach, which strives to convince the problem drinker or drug abuser that he or she is a lifelong alcoholic or addict. More religious than clinical, Alcoholics Anonymous derives its ideas and rhetoric from the 19th-century temperance movement. A.A.'s 12 steps, six of which refer to God, leave no room for therapies that teach the drinker techniques of moderation or for changing the circumstances that led to the drinking problem. Yet clinical comparisons regularly show that these techniques work better than the 12-step model.

In group sessions based on the A.A. model, fellow inmates and treatment personnel abuse the "patient" who refuses to

concede that he or she is an alcoholic. Public figures such as baseball player Dwight Gooden (treated at the Smithers Center in New York) and Chevy Chase (treated at the Betty Ford Center) have described their horror at witnessing—and experiencing—such onslaughts.

The indiscriminate imposition of such therapy on the young is therefore especially troubling. The incarceration of adolescents in private mental institutions—primarily for substance abuse—grew by 450 percent during the 1980s. Parents agree to many of these commitments under duress, pushed by school drug counselors, social-service agencies, and private treatment centers. (Treatment center staff pressure parents to raise the huge sums required to pay for treatment, repeatedly warning that otherwise their child will soon end up dead.) Sometimes juvenile courts require treatment as a condition of probation, and family courts may order treatment in cases involving divorce, runaways, or custody disputes.

Adolescents are often hospitalized merely because they have been caught—or suspected of—getting drunk or smoking marijuana. Yet adolescent binge drinking or drug experimentation does not predict later alcoholism or addiction. Treatment brainwashes impressionable teenagers into accepting a powerful, negative view of themselves—that they cannot control their drug or alcohol use—even though most would ordinarily outgrow their adolescent excesses without treatment. Furthermore, says University of Nebraska psychologist Gary Melton, adolescent treatment frequently entails humiliating rituals and intense, prolonged group confrontations that "may destroy the youngsters' already fragile self-esteem."

Such treatment of adolescents for chemical dependence is certainly at the opposite extreme from the Twitchells' case. In a 1988 ruling involving Christian Scientist parents, the California Supreme Court discounted an 1874 decision in which manslaughter charges were dismissed against a parent who had treated her child with prayer instead of calling in a doctor. "Were blisters, leeches, and calomel the medical alternatives to prayer today," the court held, such a defense would "more fully resonate." Yet the same religious conversion that constituted alcoholism treatment in 1874, when blisters and leeches were common medical remedies, continues today—with the full cooperation of the medical and legal systems.

Parents often agree, under duress, to incarcerate their children in treatment centers; staff repeatedly warn that without treatment the child will die.

BUT SURELY, MOST PEOPLE THINK, THE CASE FOR CONVENTIONAL treatment is clear in instances of organic disorders, such as heart disease and cancer. Here, if nowhere else, we can safely say which treatments work and which do not. Or can we? Frequently we see reassessments of established treatments that have been widely promoted and practiced for years.

When subjected to long-term evaluations of medical outcomes, the evidence favoring these treatments often evaporates. Prominent examples are open-heart surgery and mastectomy, both of which have generated countermovements that dispute their value and recommend less intrusive treatments. With the chronic degenerative conditions that challenge 20th-century medicine—unlike infectious diseases of past eras that were successfully attacked by "magic-bullet" drugs—lifestyle and environment can be as important as surgery and medication in the overall prognosis.

Cancer treatment illustrates the uncertainty of conventional medical wisdom. Given the toll it takes on women's lives, breast cancer might well be described as an uncontrollable catastrophe comparable to AIDS. Why, then, do most of us feel that we are progressing in our battle against cancer? The American Cancer Society has tirelessly promoted the idea that we are winning the war against cancer—and that, incidentally, people, institutions, and government should increase their financial support for research and treatment.

In contrast to this rosy view, a congressional investigation in the late 1980s concluded: "For a majority of the 12 most common tumors there was little or no improvement from 1950 to 1982 in the rate at which patients survived their disease." The same can be said today. It may be less reasonable than we imagine to castigate those who seek Laetrile treatment as superstitious, soft-headed fanatics when compared to those of us who choose "sound" medical treatment.

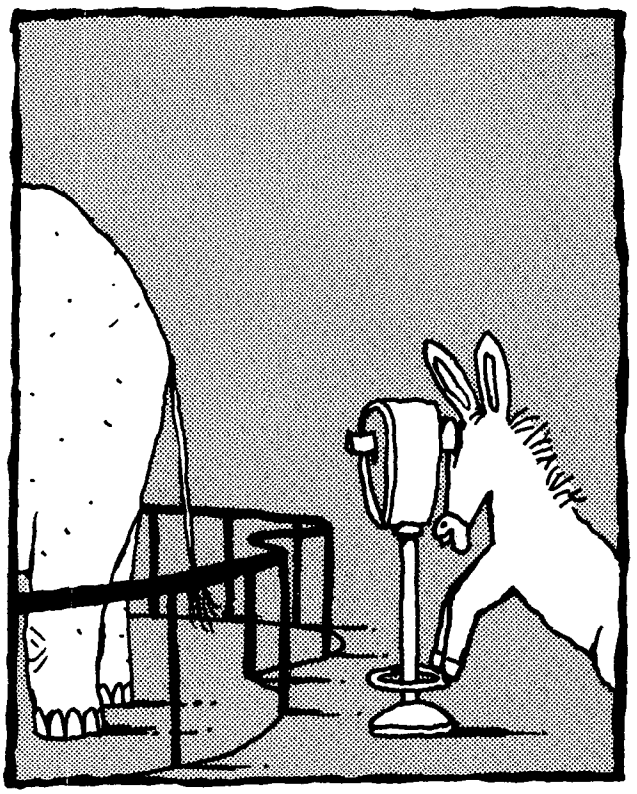
By the same token, we should not be hasty to accept a particular kind of treatment because professionals whose careers are invested in it and people who are religiously devoted to it (such as A.A. members) declare it beneficial. Judges, like most laypeople, are often swayed by extravagant claims presented from these economically and emotionally slanted perspectives. What they don't know is that other qualified professionals, perhaps less visible than gung-ho therapy adherents, offer good reasons to discount these inflated claims.

Clearly, any court that is asked to impose treatment decisions should move cautiously. The presumption should be in favor of the values and choices of the individual or family. There are surely cases where well-meaning religious devotees choose unwisely and thereby endanger the health of their children. But often cases that give rise to charges of this sort are far more complex than the legal system can easily resolve. Controversies that are depicted as conflicts between science and faith may in fact be conflicts between two kinds of faith—one of them the unquestioned belief that medicine knows best how to handle any problem.

Contributing Editor Stanton Peele, a psychologist and health researcher, and Archie Brodsky, a writer and health-care activist, are co-authors (with Mary Arnold) of The Truth About Addiction and Recovery: The Life-Process Program for Outgrowing Destructive Habits, *forthcoming from Simon & Schuster.*

LOOKING LEFT

BY MARTIN MORSE WOOSTER



It was the autumn of 1990, and America's liberals and leftists clamored for a place in the sun. The Republican Party was led by a man elected to be a second Ronald Reagan but whose persona was that of a kinder, gentler Richard Nixon. The economy was swan-diving into a recession, as developers, investment bankers, and savings-and-loan executives spent their days alternating between the bankruptcy courts and grand jury proceedings.

The conservative movement appeared to be splitting up. The sniping between traditionalist conservatives and their neoconservative rivals had escalated into a cold war, and fiends had burst in on Pat Buchanan and fired a round of verbal bullets at point-blank range.

In the 1990 elections, voters, when they wanted to change their leaders, preferred politicians with principles over those who believed in nothing at all. While many of these principled politicians were Republicans and some were even conservative, in a few states voters preferred liberals or leftists to a Republican nonentity. Given some victories—a governor in Oregon, a senator in Minnesota, and the first avowedly socialist congressman since the days of Harry Truman—some liberals proclaimed that their cause was resurgent.

When Robert Kuttner viewed the future in the October 29 *New Republic*, he was as enthusiastic as a child in a candy store who got to stuff his pockets with chocolate bars, Tootsie Rolls, and jelly beans. Faced with a dark and forbidding future ("winter is coming, the larder is empty, and the supply of firewood has already been burned"), Kuttner's cure was to stimulate spending by increasing taxes. If people stopped spending money on what they wanted to and were forced to give more money to the state, said Kuttner, all would be well. After all, he said, World War II government spending ended the Great Depression!

The one admirable fact about Kuttner is that he never changes. In good times or bad, Kuttner's cure for the economy is always the same: massive government spending and punitive income tax rates. Such constancy is to be admired in our fickle world.

Most of Kuttner's peers on the left aren't as stalwart in their opinions. Indeed, it's difficult to determine what the American left wants these days.

That is because the American left, like the American right, has its authoritarian and anarchistic tendencies; both Emma Goldman and Herbert Croly have their descendants among today's leftists. Since the first World War, the debate on the left has been about what tendency will predominate. Until the 1960s, most prominent leftists, such as the writers and editors of *The New Republic*, tended to be authoritarian command-and-control social democrats. The rise of the New Left in the 1960s restored the anarchistic faction of the left to some degree of power. Today, neither side dominates. Indeed, in many cases, a leftist typically uses authoritarian and anarchistic language at the same time.

Consider the question of free speech. On the one hand, most leftists believe that recipients of National Endowment for the Arts grants have an absolute right to say and do whatever they want. On the other hand, many of these same leftists—particularly feminists, gay-rights activists, and blacks—then argue that politically incorrect speech on campuses should be severely restricted or banned.

But David Rieff, in the November *Esquire*, notes that censors on the right and censors on the left have an eerily similar agenda, as both demand "linguistic martial law." Far from being the cutting edge or the avant-garde, Rieff argues, the puritans of the left advocate the timeless American view that the country will be purified if all purportedly harmful substances or thoughts are outlawed. Rieff correctly notes that the arguments for banning "hate speech," pornography, and alcohol advertising rest on the same false assumption—that Americans "are so gullible and childish that they will follow the lead of everything they see or hear."

In a hard-hitting essay, Rieff observes that calling for restrictions on the First Amendment, rather than advancing bold and daring views, will result in "imposing one more layer of conformity and blandness in a country where conformity and blandness in politics and thought are more and more the rule. Americans need

BOB ECKSTEIN

to take stock, to argue, ridicule and defame without worrying about hurting one another's feelings."

Rieff is correct. Banning offensive speech would reduce the debate about the future of our country to the opinions offered on the op-ed page of a one-newspaper town. The best way to advance one's cause isn't to ban your opponents' arguments, but to offer *better* arguments.

But the arguments offered by liberals and leftists these days lack vigor. Consider a symposium conducted by the Institute for Policy Studies and presented in the November *Progressive*.

Inspired by a similar forum published in *Policy Review* last spring, the IPS asked 19 prominent American leftists to determine what were "the crucial foreign and domestic priorities for the progressive movement in the 1990s."

What is curious about the symposium is who the editors selected. There are no novelists, no artists, and no one from the Hollywood Left: Saul Landau is the only filmmaker represented. There is one union leader and only two politicians, Jim Hightower of Texas and Jesse Jackson. Most of the writers earn comfortable livings as professors, think tankers, and legal-services lawyers. Secure in their endowed chairs or government jobs, few of the participants have to endure the rigors of the marketplace.

Most avoid specific reforms in favor of vaguely advancing the politics of niceness. The left, says Leslie Cagan, an adviser to New York Mayor David Dinkins, should "develop organizing vehicles to challenge power in the different arenas of our lives." "Facilitate the integration of work and family," add think tankers Heidi Hartmann and Roberta Spalter-Roth. "Encourage people to take on the joys and frustrations of public engagement," urges author Frances Moore Lappé.

Gee, that's swell. But how and why should this be done? Why should people become leftists? Most of the authors, cushioned in a comforting layer of babble, won't tell us. Those who do advance an agenda use the arguments of the past. *Monthly Review* Editor Harry Magdoff, for example, uses speeches first made by Franklin Roosevelt. Historian Howard "Ho Chi" Zinn thinks leftism is wonderful because of the eight-hour workday and the vote for women. Such nostalgia for past triumphs may comfort older leftists, but it does little to resolve the problems of our time.

The most disappointing contributors to the *Progressive*'s forum are the feminists. At its best, feminism means that the virtues that made America great—hard work, independence, self-reliance—shouldn't be arbitrarily limited to a particular sex. That sort of individualist feminism isn't represented in the *Progressive* forum.

Instead, we have such comments as Rutgers University scholar Charlotte Bunch's call for a world where "progressive and feminist values" carry the day. Most of these values—"economic justice," "participatory democracy," "community responsibility for the fate of the planet"—involve considerable expansion of government power. But why should women, freed from dependence on men, see government as the solution to every problem? To replace Big Brother with the nanny state is hardly an advance.

None of the *Progressive* contributors makes a case for advancing socialism. The best prosocialist argument I've read recently is made by British political scientist Alan Ryan in the fall issue of *Dissent*.

With the collapse of communism in Eastern and Central Europe, Ryan observes, it is "an odd time to be thinking about socialism in the 1990s and in the West." Indeed, Ryan admits that most of the old Marxist arguments have to be tossed on the rubbish heap of history. The proletariat doesn't exist; most revolutionaries have failed; and most of Marx's economic arguments, particularly his calls for central planning, are, in Ryan's view, misguided. Even the socialist arguments derived from altruism, Ryan admits, won't work any more. Most people would rather give to their church or to the March of Dimes than sacrifice their life or their incomes to people they don't know.

Why be a socialist? Ryan gives three arguments. First, the market won't provide "public goods"—a lighthouse, or a clean river. Second, socialism restores a sense of community—in an ideal socialist world, "one's ideas and aspirations are taken as seriously as anyone else's." Third, a socialist world limits the destructive possibilities Ryan considers inherent in capitalism. In the capitalist world, Ryan argues, most businesses fail, including "ninety-nine out of every hundred new novelists and pop groups." In Ryan's socialist system, planners would advise these would-be entrepreneurs to find more fruitful lines of work.

But most "public goods," when given a market or a market-like mechanism, are produced. When businesses are given the incentive to reduce pollution through credits or licenses, for example, they are more likely to reduce waste than businesses that are severely regulated. As for "creative destruction," not every artist succeeds.

But consider the dismal record of the National Endowment for the Arts, where grants are typically awarded, not because of merit, but because an artist has pals who hand out the cash. What's more noble—succeeding as an artist because you produce books people want to read or because you went to the right schools? Socialist societies, as an examination of Leonid Brezhnev's Soviet Union or Harold Wilson's Great Britain will show, are less likely to advance social mobility than their capitalist counterparts.

As for Ryan's second point, it would be a major advance if the puritans on the left and their counterparts on the right would stop seeing the other side as devils whom they must silence. The left and the right don't talk to each other enough; if they did, they might find that their foes, however misguided, are neither beasts nor demons, but people very much like themselves. As H.L. Mencken once noted, a combatant in the political arena should always realize that "his opponent is as decent a man as he is, and just as honest—and perhaps, after all, right."

Martin Morse Wooster is the Washington editor of REASON.

BLACK BOOKS

BY STEVEN CARLSON

From the late 1970s until the Romanian revolution in December 1989, János Arany drove from Budapest to Romania every two weeks with books for his friends and acquaintances. Arany is a "Transylvania freak," part of a loose network that helps Hungarian intellectuals in Romania stay in contact with the outside world.

Today Arany continues smuggling books, though not as often. Restrictions on the flow of information have supposedly been lifted, but Hungarians bringing books into Romania still encounter problems with border guards. ("János Arany," by the way, is a pseudonym.)

András Schumiczky of the Hungarian Maltese Cross, which organizes transportation of most of the aid to Romania, reports that "officially one can take anything." But he says there have been "disturbances": Some of the trucks have been sent back from the border because of unexpected paperwork, and delays can vary from minutes to hours to days. (Even before the revolution, the scrutiny of the border guards differed from county to county, depending on the attitudes of local officials.)

János Arakovács, founder and director of the Hungarian Press of Transylvania, believes that regardless of what the government says, the Romanian border policy hasn't changed since the revolution. And like many Hungarians (and Romanians), he objects to the use of the term *revolution*. "The leadership has changed, but the structures have remained intact," says Arakovács, who emigrated from Romania in 1983.

The book smugglers have been active ever since the late '70s, when the Ceausescu regime tightened its control of information. The government was especially suspicious of the ethnically mixed population in Romanian Transylvania, just across the southeastern border of Hungary. Officials put Hungarian histories, maps, and travel guides at the top of the list of banned materials, along with Bibles and religious works. Hungarians traveling into Romania even had to surrender newspapers and magazines.

In the 1980s, the Hungarian National Library began donating books to the smugglers and giving Romanian travelers certificates to use for purchases from Hungarian book stores. An employee of the library, Arany is part of an army of smugglers that developed from contacts between churches, relatives, friends, and professional colleagues on both sides of the border.

"We played a continuous game with the Romanian border guards," Arany says. "As they found our favorite hiding places, we had to find new ones." The guards sent the smugglers they caught back to Hungary with stamps in their passports forbidding entry to Romania. Ferenc Zöld, director of the State Book Publishers' Association, smiles sheepishly as he recalls that he earned the distinction of being banned from Romania back in 1979.

After Ceausescu was overthrown, many of the cars that drove across the border from Hungary were carrying books as well as food, clothing, and medical supplies. Zöld, one of many Hungarians with relatives in Transylvania, helped organize a collection of books. The member publishing houses of his association donated materials valued at more than 65 million forints (about $1 million).

"We asked ourselves, what do they need the most?" says Péter Zászkaliczky, pastor of the Deák Square evangelical church in Budapest. The church managed to send some 200,000 Hungarian-language volumes, including literary, religious, popular, educational, and children's books. As I write, the church expects to send four more trucks across the border in the coming months.

"The work our church did after the revolution was really insignificant," Zászkaliczky insists. "Many Hungarians participated privately in such actions, and together it amounted to a monumental effort."

And yet Arakovács notes that the letter of the law hasn't changed. A month after the December revolution, he was with M.G. Tamás, a philosopher who emigrated from Romania in 1978 and was elected to the Hungarian Parliament as a Free Democrat last spring. The two were visiting Tamás's original home in Kolozsvar (Cluj). Tamás tried to take 10

KEN SIEGEL

books back across the border with him, "but the letter of the law is five, and he only was able to take five copies," Arakovács says with a smile.

When Tamás lived in Romania, a regular supply of literature was vital to him. He started receiving volumes from Hungary in the 1960s. The smugglers often sold books at fantastic prices, and he occasionally had to part with family heirlooms to get the best volumes. Still, he says, "the fact that I got books and periodicals from Hungary kept me alive—my life turned around that."

Today Tamás "argues fluently in five languages," according to a recent article

Restrictions on the flow of information have supposedly been lifted, but Hungarians bringing books into Romania still encounter problems with border guards.

in the *Hungarian Observer*. "A backward society has many advantages," he jokes. "No amusements, movies, pop culture, travel—so what do you do? You sit at home and read classical literature."

Tamás says private initiatives to send Hungarian-language books abroad are just as necessary as before because of rising nationalistic feeling in border countries with Hungarian minorities. On a recent trip to Bratislava, a formerly Hungarian city now in Czechoslovakia, he saw that newspaper vendors were no longer selling Hungarian publications. He asked a vendor if the Communist government had ever banned sales of Hungarian newspapers. No, the vendor said. Tamás asked if news dealers are permitted to sell Hungarian newspapers now. Yes, the vendor replied, but now we don't dare.

Steven Carlson is a freelance writer in Budapest.

All around the world, socialism and central planning are being rejected:

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PLANNING FOR CAPITALISM

BY MELANIE S. TAMMEN

Central planning brought ruin to Eastern Europe, a $450-billion foreign-debt burden to Latin America, and even greater poverty to sub-Saharan Africa, where per capita incomes are lower today than they were in 1970. Yet the United States continues to support the institutions that counsel and finance still more central planning—the World Bank, the related regional development banks, and the International Monetary Fund.

Now Washington is poised to sidetrack Eastern Europe's opportunity for a true free market by joining the World Bank and related organizations in promoting a variety of rear-guard socialist planning efforts.

In Eastern Europe, the World Bank and the IMF are extending unprecedented levels of loans to governments. Since February 1990, the IMF has committed about $2 billion to Poland, Yugoslavia, and Hungary. The World Bank plans to lend $7 billion to $8 billion in the region over three years. Furthermore, the Bush administration has pledged $1.2 billion in U.S. funds to support a new multilateral bank for Eastern Europe.

And in 1989, Congress approved the $938-million Support for East European Democracy Act, which provides $300 million for "private enterprise" loans in Poland and Hungary. Government-appointed boards of directors will dole out $240 million in Poland and $60 million in Hungary. As former Assistant Treasury Secretary Paul Craig Roberts told a congressional panel in 1990, "Contracts and financing will be awarded based on political connections....The economic process will be taken over by 'rent-seekers' competing for a share of the largess. Real private enterprise will languish as entrepreneurial skills are directed into the political arena."

In May, the Bush administration formally pledged U.S. participation in the European Bank for Reconstruction and Development. (Congress has yet to authorize support for the project.) Designed to lend to governments in Eastern Europe and the Soviet Union, this new multilateral bank will have $12 billion in initial capital.

World Bank President Barber Conable: still keen on government-directed business loans.

During international negotiations over the creation of the European Bank in early 1990, U.S. Treasury officials portrayed the institution as a new-and-improved development bank. They suggested that the bank will play an important role in Eastern Europe's privatization efforts. Yet multilateral development banks have never linked significant amounts of assistance to privatization of bloated, money-losing state enterprises. The World Bank's emphasis remains rehabilitation, not privatization. Despite its market-oriented rhetoric, it continues to tinker with socialism and central planning.

Advocates of the European Bank emphasize that many of its loans will go directly to firms that are already private. But the World Bank provides the principal model for channeling multilateral bank money to private borrowers. Its "directed-credit" system funnels money through "development finance institutions," generally state-run banks.

The World Bank lends DFIs hundreds of millions of dollars, which they in turn are supposed to lend to small and medium-sized private enterprises. Government bureaucrats run most World Bank–supported DFIs, allocating credit by "picking winners"—or, in reality, picking anyone. Since the mid-1970s, the World Bank has lent some $30 billion to DFIs throughout the developing world.

In 1985, an internal World Bank review looked at a sample of these banks and found that many borrowers had failed to repay their loans. In almost half of the cases, more than 25 percent of loans were delinquent; at nearly one-quarter of the DFIs, more than 50 percent of loans were delinquent. "Many governments used credits from DFIs for low interest rate lending to public and quasi-public institutions," the report said. "On loans made at the behest of government, financial discipline was often poor, and for political reasons the DFIs were not able to foreclose on delinquent loans." The review concluded that "few DFIs have become financially viable, autonomous institutions capable of mobilizing resources from commercial markets at home and abroad."

But the World Bank continued to extend about $2 billion in new loans to DFIs each year. In 1989, the bank's annual *World Development Report* issued another damning verdict. Among a sample of 18 DFIs, 50 percent of loans, on average, were overdue. "It is clear [directed-credit programs] have damaged financial systems," the report concluded, noting that cheap DFI loans had encouraged unproductive investments, promoted both unintentional and willful defaults, impeded development of capital

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markets, and fostered bank borrowing where equity financing would have been more appropriate.

Nevertheless, in February 1990 the World Bank approved two directed-credit loans for Poland. The National Bank of Poland, the country's central bank and monopoly lender, will disburse the money, which includes $245 million for export-oriented industrial projects and $100 million for agricultural processing industries. Funneling loans through the central bank will enhance its power and retard the development of a private banking system.

The track record for similar loans elsewhere isn't encouraging. In Yugoslavia in the 1980s, the World Bank channeled at least $700 million in loans through seven of the government's nine regional lending groups. The bank knew that these institutions were lending money at rates that were negative in real terms, ranging from minus 10 percent to minus 20 percent. In 1989, a confidential World Bank study disclosed that all the banks were in the red. In 1983, the World Bank provided a $275-million "structural adjustment loan" to Yugoslavia's state-owned Udruzena Beogradska Banka; four years later, the bank was $1.2 billion in the red. Yet the World Bank continues to bankroll Yugoslavia's socialist experiment: In April 1990 it approved a second structural adjustment loan, this time for $400 million.

The World Bank's credulous attitude toward Eastern Europe's self-destructive economic policies makes it an unlikely leader on the path of market-oriented reform. Consider this excerpt from a 1979 World Bank study of Romania: "Between 1950 and 1975 the economy grew rapidly within the framework of comprehensive economic planning made possible by the state's control of the major productive resources and its monopoly over foreign trade....According to official statistics, Social Product and National Income grew by 9.8 percent per annum for 25 years....Picture for 1981-90: National income should grow at 8 to 8.9 percent per annum."

This is sheer nonsense. As Sir Alan Walters, former top economic adviser to Margaret Thatcher, explained in a 1990 *Forbes* interview: "In 1975 Romania's per capita income was $800 or $700. If they grew at 10 percent per annum for the previous 25 years, then in 1950, they must all have been dead from starvation!"

More recently, a 1989 report by the World Bank's Economic Development Institute, *Financial Reform in Socialist Economies*, outlined how Yugoslavia can introduce a stock market without private property. (The state would own and trade the shares.) One chapter concludes: "The issue is not one of returning to capitalism, but of using its financial instruments by adapting them to socialism...not that of introducing private property rights, but defining alternative incentive mechanisms that could play the role they play in capitalist economies."

As Hungarian economist János Kornai and Polish economist Jan Winiecki argue, the nations of Eastern Europe need flesh-and-blood entrepreneurs more than anything else. Their point is simple: You can't have capitalism without capitalists. The countries of Eastern Europe must cultivate true capitalists—both domestic and foreign—on their own, through a functioning convertible currency, viable legal accounting systems, modest levels of taxation and regulation, and full, constitutionally-guaranteed property rights.

The World Bank's record throughout the developing world and in Eastern Europe demonstrates that it cannot be a catalyst for radical economic liberalization. Following in its path, the new East European Development Bank is fundamentally a socialist undertaking. Loans from multilateral development banks will only serve to further politicize economies already burdened by state control. The new political structures in Eastern Europe are weak, and the inflow of subsidized credit can easily forestall the necessary transition to market prices and private investment. With the verdict on socialism so clear, the United States and other Western governments should abandon the oxymoronic idea of planning for capitalism.

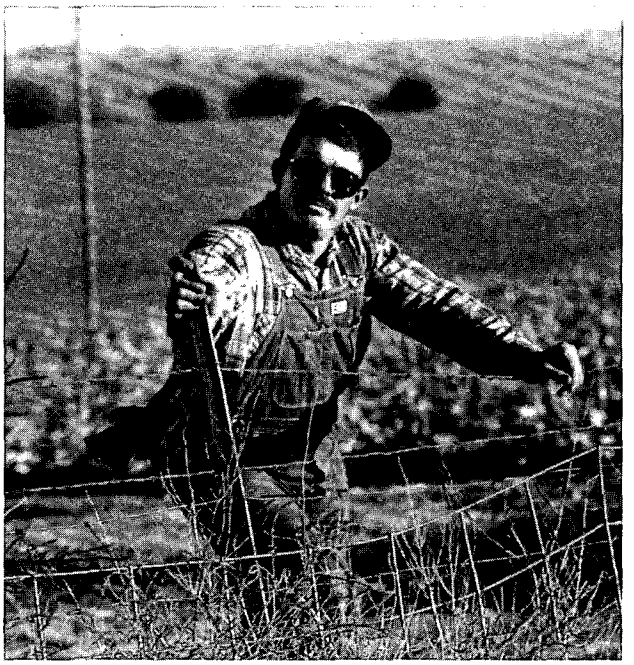
Melanie S. Tammen directs the Cato Institute's Global Economic Liberty Project.

EASY MONEY

BY BLAKE HURST

In 1986, folk singer Nanci Griffith offered a message of hope to debt-ridden farmers: "If this rain can fall these wounds will heal / They'll never take our native soil / But if we sell that new John Deere / And if we work these crops with sweat and tears / You'll be the mule, I'll be the plow / Come harvest time we'll work it out / There is still a lot of love / Here in these troubled fields."

The farm crisis has since faded from the front pages, and Nanci Griffith has gone on to other subjects for her ballads. But what has become of the farmers who were caught up in the financial whirlwind that hit agriculture in the 1980s? If they were borrowing from the Farmers Home Administration (FmHA), they are still driving that new John Deere.



Blake Hurst: The Farmers Home Administration encourages delinquent borrowers to soak other taxpayers.

That's because the courts and Congress have eliminated any incentive that FmHA borrowers might have had to repay their loans. In 1983, farmers convinced a federal district court in North Dakota that the FmHA had failed to comply with legislation requiring the agency to accommodate delinquent borrowers. The court enjoined the FmHA from foreclosing on farms until 1988, when the Agricultural Credit Act of 1987 took effect.

The act allows farmers to drastically reduce their debts in two different ways. Farmers can "buy back" their loans from the FmHA at a dramatic discount, canceling their debts by paying a relatively small sum derived from an elaborate formula. Or they can reduce the amount they owe to the value of their remaining collateral. Even if the FmHA ultimately forecloses on a delinquent farmer's property, the act requires that the agency offer to sell it back to him at a discounted price.

Last fall's budget package calls for changing the FmHA's assistance from direct loans to loan guarantees, but taxpayers remain on the hook. According to the most recent estimate, $12 billion of the FmHA's $27-billion portfolio will never be repaid. This is a substantial sum, but it only begins to describe the damage done by the program.

Farmers are proud of their independence, their integrity, their adherence to traditional values. But farmers are human. When their neighbors are rewarded for dishonesty, they are tempted to join the ranks of the delinquent. In the '80s, the FmHA sent farmers a clear message: Only fools pay their debts.

When Nanci Griffith sings about farmers, she tugs at our heart-strings. But if the following examples from a 1990 Government Accounting Office study of the Agricultural Credit Act are any indication, it's our purse strings we should be worrying about.

Farmer A (the report offers no names and few particulars) is no longer farming. He owes the FmHA some $805,000 and has secured assets of only $73,000. The FmHA has offered to write off $738,928 of the debt. But since the farmer hasn't made any payments since 1985, we taxpayers probably shouldn't hold our breath.

The GAO report cites cases that are even more shocking. Consider Farmer B, who stands to benefit from a $10.7-million writedown on a debt of $11.8 million, even though the FmHA freely admits that he has committed fraud in his dealings with the agency.

Under the 1987 law, farmers acting in "bad faith" are still eligible for benefits. A 1989 GAO report offers numerous examples of such abuse. One farmer had $83,400 in cash and recreational vehicles but refused to pay the FmHA the $43,000 he owed. Many borrowers have sold secured equipment without informing or paying the FmHA.

Another farmer who owed the FmHA some $348,000 applied for restructuring because he was in arrears for $76,269. He had made no payments for at least six months. Although he had $91,284 in his checking account, he still qualified for a plan that let him "buy back" his loan for $151,000, thereby costing taxpayers nearly $200,000. (Due to such abuses, Congress recently instructed the FmHA to consider unsecured assets when offering loan-buyback and debt-reduction deals.)

The Agricultural Credit Act also ensures that if the FmHA repossesses a farm and sells it, the new owner will be as insolvent as the original borrower. First, the FmHA must offer the farm to the original owner at a price equal to the "net recovery value": the market value minus the projected cost of disposing of the property elsewhere. Until recently, if he refused this sweetheart of a deal, the

CHUCK HOLLEY

FmHA would then offer the farm to members of his family. If they turned it down, the farmer's neighbors would get the next shot. Last fall Congress passed legislation requiring the FmHA to give preference to beginning farmers instead. But simply selling the property to the highest bidder remains illegal.

The first-refusal right has been a bonanza for delinquent borrowers. An article in the February 1989 issue of *Farm Journal* reported that in one county audited by the Department of Agriculture in 1987, six borrowers resold at a profit farms they had bought back from the FmHA. In five of these cases, the farmers bought and sold the properties on the same day.

The financial problems of farmers in the 1980s sprang largely from the lending policies of the FmHA. In the mid-'70s, the agency lent farmers between $1 billion and $2 billion a year. By 1980, annual lending had reached $8 billion, all at rates at least a few points below what commercial lenders were getting, and sometimes as low as 5 percent. In an industry with $30 billion to $40 billion in yearly profits, that amount of subsidized lending had the predictable result of inflating land and equipment values. When farm income faltered and interest rates rose in the early '80s, a lot of farms went out of business or were forced to cut back their operations.

Agricultural economist F. Clifton Lutrell, formerly of the Federal Reserve Bank in St. Louis, notes that a variation on Gresham's Law was at work. Only farmers who can't borrow money from commercial banks are eligible to borrow from the FmHA. As subsidized borrowers bid up the price of things that farmers buy, and as the influx of cheap capital into agriculture increases the supply of the things that farmers sell, profits go down. The next year, more farmers are turned down by commercial lenders and can borrow from the FmHA. Although farmers fondly remember the '70s as the decade of high prices and record profits, it was also a decade of subsidized borrowing. The share of all farm loans provided by the FmHA rather than private banks rose by 400 percent in those years.

Congress originally envisioned the FmHA as a temporary lender to beginning farmers, who were supposed to "graduate" from the program to commercial banks as they learned the ropes and their financial situations improved. But more than 40 percent of the agency's borrowers are still taking taxpayers' money after seven years; nearly a quarter of them remain in the program after 10 years.

One of my neighbors recently retired. Well into his 60s, he still used the FmHA for his operating capital. Obviously a poor student.

Blake Hurst is a Missouri corn grower.

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THE REBIRTH OF WATTS

BY RAOUL LOWERY CONTRERAS

Twenty-five years ago, South-Central Los Angeles, the Watts area, erupted into riots and flames. Across 100 square miles of the city, people ran amok, looting, burning, and killing. The country had not seen anything like it since the Detroit race riot of 1943. Watts became a symbol of explosive violence fed by social discontent.

The black leaders of the time rationalized the riots, the destruction, the deaths, as results of white America's entrenched racism, parasitic capitalism, and patronizing attitudes toward what are now called "people of color." Caught between black rioters, white police, and National Guardsmen sent in to restore peace, the city's Mexican-American population hunkered down and waited for the riots to spend their fury. The day after order was restored, Mexicans began a mass exodus from their traditional neighborhoods in South-Central Los Angeles, heading for East Los Angeles and the San Fernando Valley.

Korean and Latino entrepreneurs are bringing about a commercial renaissance in South-Central Los Angeles.

Los Angeles's white establishment turned its back on Watts, as did the black middle class, which moved out as quickly as the Mexicans had. Like the Mexicans, middle-class blacks refused to suffer because of perceived wrongs against a growing group of uneducated, unskilled blacks flooding in from the Southern states. White businessmen, particularly Jewish businessmen, the backbone of free enterprise in Watts, boarded up their shops as their leases ran out and left.

In the wake of the riots, block after block of what had been a thriving business district died overnight. Watts became a cultural and industrial wasteland.

After a quarter century, capitalism is returning to Watts, and it speaks Korean and Spanish. Capital, which speaks all languages, is finding its way into the neighborhood to provide shelter and amenities for Koreans, Mexicans, and other Latinos determined to work for themselves.

In the 1980s, hundreds of thousands of Spanish-speaking immigrants flooded into Los Angeles. They spilled out of East Los Angeles to form barrios, Spanish-speaking communities, in the San Fernando Valley, Pomona, the Inland Empire of San Bernardino and Riverside, and Orange County. But most, looking for cheap housing, headed into South-Central Los Angeles—Watts.

On a recent visit to Watts, I interviewed a man who told me his earliest memory is of the riots. He is 32 years old, didn't finish high school, and hasn't worked for several months. At his last job, as a construction worker, he didn't always show up on time, so they fired him.

He says he applies for work everywhere, but no one will hire him because he wears a beard and isn't "clean-cut." He says dust reddens his eyes and makes it look like he's on drugs. He doesn't use drugs, just drinks a little beer. He complains that Mexicans take all the jobs. He doesn't like the "rich" blacks who move out as soon as they can afford to. He says they should stay and help people like him.

A block away is a grocery store that a black family ran for 30 years. They recently closed the store because too many customers owed them money for groceries bought on credit. For a generation, children could pick up milk and bread, and the store would run tabs. For a generation, people would come in on payday or once a month, when their welfare or Social Security checks came, and settle their bills. But people stopped settling up, so the elderly black couple closed their store, and black capitalism lost two more practitioners.

Korean grocers will probably reopen the store any day, but they won't give credit. Nor do the hundreds of Mexicans, Salvadorans, and Guatemalans renting space on Central Avenue in order to sell groceries, clothing, tacos, straw hats, radios, televisions, and furniture.

Central Avenue, the principal street of Watts, used to have the appearance of a bombed-out city. Plywood sheets were ubiquitous. Now Central Avenue is coming back to life. Investors who sense a commercial renaissance are building strip shopping centers and buying up land and buildings willy-nilly.

The new entrepreneurs not only rent stores, they rent or buy houses in Watts and fix them up so they can be close to their businesses. They are displacing the blacks. Those who can afford it move to the suburbs, to Riverside County, where the black population has increased by more than 30 percent in recent years. Or

JONATHAN NOUROK

they move to the San Fernando Valley. Wherever they go, it's a long way from Watts. And they don't come back.

The second man I talked to in Watts was a longtime real estate broker, a black self-made millionaire who owns two dozen rental properties. His view of Mexicans: "I love them madly....Once in a while, they gang up on me. That is, I'll rent to one family and when I come back a month later to collect the rent, there'll be another family living with them. But

Central Avenue, the main street in Watts, used to look like a bombed-out city. Now the area is coming back to life.

they always pay their rent." The broker is retiring, selling his properties to Mexican immigrants for small down payments and carrying the mortgages.

He doesn't live in Watts. He hasn't in years. He only returns to collect his rents.

A few blocks away I met a young Mexican from Guanajuato, who was selling snow cones, *raspados*, from a pushcart. He told me he'd been in the United States for five months.

"How long have you been selling *raspados*?" I asked.

"Five months," he said. He started the day after he arrived, illegally, in Los Angeles. He sets his own hours, picks his territory, and works seven days a week. He makes $30 to $40 a day, sending half home to his wife and children in Mexico, where he used to work 10 hours a day for $4.00.

The Watts riots? He'd never heard of them. He couldn't believe anyone would complain about conditions in America. "There's too much money to be made here," he said.

Raoul Lowery Contreras is a syndicated columnist based in San Diego.

FINANCIAL PRIVACY

Best Techniques for Creating FINANCIAL PRIVACY

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- Using a business to create privacy
- Hiding your assets ■ Privacy from taxes
- Using other "names" ■ Offshore options
- Operating in cash ■ Confidential loans
- Safes, private storage ■ Cash equivalents
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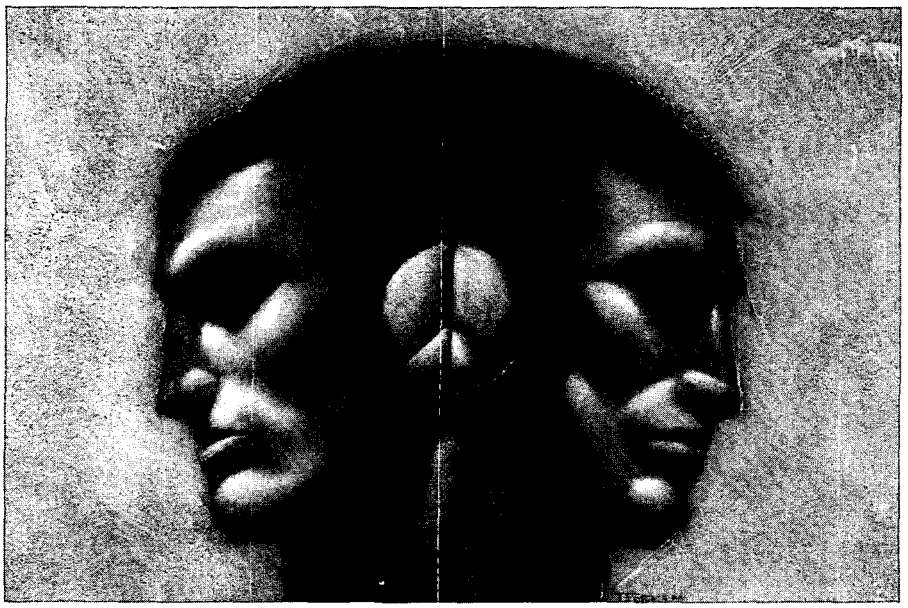
Cloaking Device

BY JULIANA GERAN PILON

In Search of Civil Society: Independent Peace Movements in the Soviet Bloc, edited by Vladimir Tismaneanu, New York: Routledge, Chapman, and Hall,193 pages, $35.00



To understand the phoenix-like emergence of civil society in the former Soviet Bloc, one must appreciate the imaginative ways that individuals have found to circumvent the limits imposed by totalitarian governments. Vladimir Tismaneanu, a Romanian by birth and education who was recently named associate director of the Center for the Study of Post-Communist Societies at the University of Maryland, is eminently equipped to explore this theme. His examination of independent peace movements, which includes excellent analyses by Central-Eastern European scholars and activists, sheds light on the project of reconstruction after the fall of communism.

Peace movements offered an unusual opportunity for dissidents within the Soviet empire to escape the rigidity of the totalitarian system. Since "peace" was, after all, the domain of official communist rhetoric, its traditionally anti-Western and anticapitalist overtones served to mask, at least temporarily, the true objectives of the independent movements. Thus, Tismaneanu writes, "single issues of broad social significance—human rights, peace, conscientious objection, ecology, preservation of historical monuments, and so on—are embraced and promoted by independent activists in the attempt to further their agenda for change without granting the government a rationale for overall repression."

The underlying goals of the independent peace movements in the Soviet Bloc distinguished them from their Western counterparts. The two sets of movements had different motivations, interests, and philosophical principles. The Eastern dissidents not only consistently opposed the communist system in which they lived, they tended to identify with the capitalist and classical-liberal ideology to which the Western movements were hostile. This is not to deny, however, that in many areas the two sets of groups have cooperated, allowing the Eastern movements not only to survive but often to provide seeds for other organizations—the beginnings of a genuine civil society.

The independent movements are more than a decade old, dating at least as far back as the Charter 77 initiative in Czechoslovakia, whose main inspiration was profound opposition to Soviet occupation. The following year, the East German Evangelical Church signed a concordat with the ruling Socialist Union Party to try to temper East Germany's militaristic course. Futile as that particular initiative may have been, efforts within the GDR continued into the early 1980s, when a group called Social Service for Peace called for a civilian-service alternative to the draft.

Pacifism emerged even in the USSR, where 11 Moscow intellectuals founded the Group to Establish Trust between East and West. In May 1983, the group declared that true détente cannot exist until "international cooperation and contacts become part of the day-to-day existence of the average citizen."

In Poland, the birthplace of Central European anticommunist activism, pacifism took over by storm in the spring of 1985. A group of Polish independent pacifists formed the organization Freedom and Peace in response to the trial of Marek Adamkiewicz, a young draftee sentenced to a stiff prison term for refusing to take the military oath. A year later, the Chernobyl accident provoked a brush fire of pacifist actions throughout Eastern Europe and the Soviet Union.

Later that year, the supranational aspect of the movements became evident:

TIM TEEBKEN

In November 1986, independent activists from Czechoslovakia, Hungary, the GDR, the USSR, and Yugoslavia signed an appeal to the signatories of the Helsinki Accords emphasizing the interdependence of the three "baskets" of the Helsinki Final Act. Contrary to the official Communist line, the independent activists rejected any attempt to trade genuine freedom for peace.

This stand led to friction with Western peaceniks. In his chapter on Czechoslovakia, diplomatic historian Milan Hauner describes an exchange of letters in the early 1980s between "Vaclav Racek," the pseudonym for a Czechoslovakian critic of the Western peace movements, and E.P. Thompson, a British social historian and member of European Nuclear Disarmament (END). Speaking on behalf of the East Europeans, Racek refused to subordinate human rights to "peace."

He added that Thompson's aim of a nuclear-free Europe was naive and impracticable. Indeed, Racek implied that had it not been for the NATO nuclear deterrent, the Soviet totalitarian system would have crushed the liberal freedoms of the West long ago. He told Thompson that his "identification of both blocs with 'Exterminism' is unacceptable." Racek charged that END, far from being a force for freedom, was rather "an unconscious analogy of the appeasement of the Thirties."

Hauner also cites a fascinating clandestine survey conducted in 1985 that indicates a Czechoslovakian attitude toward Western peace movements very different from the line pushed by the official propaganda machine. Commenting on that survey, analyst Zdenek Strmiska notes that "among the strongest supporters of Western pacifist movements there are those who are pro-Soviet and refuse to designate the USSR as an imperialist power."

Polish historian Christopher Lazarski's study of his country's independent peace movement makes a similar point in connection with Freedom and Peace, whose strong libertarian proclivities would place it more on the right than on the left of the political spectrum. In July 1985, for example, the Polish pacifists declared that "a man ready to fulfill any order threatens peace more than the neutron bomb." They asked the Fourth European Nuclear Disarmament Convention in Amsterdam to "permanently include justice and civic freedoms in the notion of peace and to treat the struggle against totalitarian systems as equal to the efforts toward disarmament."

Freedom and Peace has differed sharply with Western peaceniks. For example, the group opposed the idea of unilateral disarmament, which it perceived as playing into the hands of Soviet militarism. In an open letter to American peace activist Joanne Landy in 1987, Polish pacifist Piotr Mienczyk expressed his concern that Western peace movements might become "a tool of Soviet policy and propaganda."

Defying the Party line, the independent activists in the Soviet Bloc rejected any attempt to trade genuine freedom for peace. This stand led to friction with Western peaceniks.

The Trust Group, a quasi-independent peace organization in the Soviet Union, was also at odds with Western peaceniks. In his analysis of the peace movement in the USSR, former Soviet dissident Eduard Kuznetsov quotes from a 1987 article by Trust Group member Aleksei Myasnikov: "Some of the Western peace activists complain that Trust Group members who wind up in the West join up with the 'right-wingers'....What does 'right-wingers' mean? Western peace activists call 'right-wingers' adherents of the strategy of nuclear deterrence or disarmament on the basis of parity. But what do the 'left-wingers' propose—unilateral disarmament?....The success of pacifism in one of the superpowers could lead to a heavy defeat."

And thus the ideological fault lines were drawn. Unlike Western peaceniks, activists in totalitarian countries perceived that a commitment to "peace" is also a commitment to liberty.

The path to both is plotted in a chapter by Miklos Haraszti, a well-known human rights activist who represents the opposition Alliance of Free Democrats in the Hungarian parliament. Haraszti describes the three stages, or "eras," that he believes necessary for any communist nation in transition to democratic capitalism.

The first era is post-Stalinist, its essential feature the rise of independent initiatives. The second, which he calls post-totalitarian, involves democratization and the development of an embryonic civil society; the authoritarian regime, at this point, is on the defensive. The third phase, post-communism proper, involves the emergence of true democracy, "which builds on the forms, energies, experiences, and pluralization that were already given shape in civil society."

Implicitly skeptical of the Gorbachev approach of reform from above, Haraszti believes that the third stage cannot take place without the other two. The civil society cannot be manipulated; it must create itself. This requires time and a certain logical sequence of events; their absence in Romania explains the current chaos in that country.

This book will be helpful to anyone seeking to understand the nature of the anticommunist revolution and the direction of change in the former Soviet Bloc. While there is much reason for hope, a great deal of philosophical and practical work must be done before observers of those traumatized nations can speak not only of monochromatic "peoples" but of vigorous, pluralistic societies.

Juliana Geran Pilon is vice president of the National Forum Foundation in Washington, D.C.

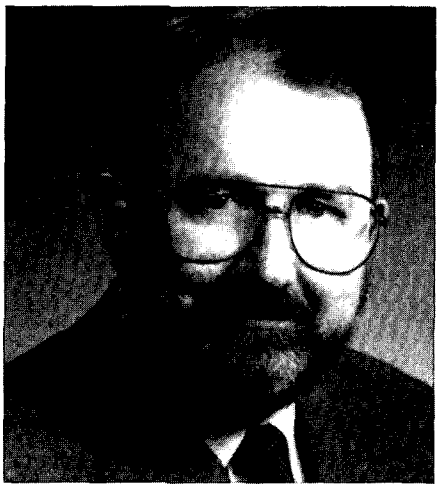
Japanese Agent Man

BY BRINK LINDSEY

Agents of Influence, by Pat Choate, New York: Alfred A. Knopf, 295 pages, $22.95

In *Agents of Influence*, Pat Choate adds an embellishment to the Japanophobia that characterizes so much of current protectionist rhetoric. The Japanese are no longer just destroying our economy; now, as a means to that goal, they are subverting the integrity of our political system as well. The book points fingers and names names, and as a result it has stirred up a fair amount of controversy. But like most conspiracy theories, Choate's thesis doesn't hold up under scrutiny.

Choate was until recently a policy analyst at TRW and is a longtime advocate of protectionist policies. He claims that the Japanese now spend $400 million a year in this country on lawyers, lobbyists, and public relations, manipulating political processes and public opinion to favor Japanese over American economic interests. This massive infiltration campaign, says Choate, "threatens our national sovereignty."



Pat Choate offers a new club with which to bash the Japanese.

But the villains in this book aren't so much the Japanese themselves, who after all merely play the American game of influence buying as they find it. The real bad guys are the American "agents of influence" who choose to represent Japanese interests. Choate heaps particular scorn on former U.S. officials who now argue the free-trade position for Japanese and other foreign clients and "have supported the progressive cheapening—even the fundamental corruption—of the value of national service that used to guide the conduct of our public life."

In the first place, Choate completely mischaracterizes the nature and effectiveness of Japanese influence. He gives the impression that the 1980s were a time when the United States, under the spell of foreign-paid lobbyists, tore down its trade barriers, while meekly refusing to criticize the protectionist policies of Japan and other trading partners.

In fact, precisely the opposite occurred. The last decade marked a sharp increase in U.S. protectionism, as well as a growing intolerance of obstacles that hindered U.S. exports to other countries' markets. From 1980 to 1988, the percentage of imports into the United States subject to substantial trade restrictions rose from 12 percent to 23 percent. Washington aimed many of these restrictions specifically at Japan. During the '80s, the United States forced Japan into imposing export limits on automobiles, steel, and machine tools. Over the same period, the United States also levied special "antidumping" duties on dozens of different Japanese products. In addition, the threat of antidumping liability forced price increases on an untold number of other Japanese goods.

At the same time, the United States hammered away relentlessly at real and perceived market barriers in the Japanese economy. Most notably, Washington named Japan an "unfair trader" under "Super 301" and threatened it with sanctions unless it removed trade barriers on supercomputers, satellites, and forest products. As an adjunct to the Super 301 process, the United States and Japan held shotgun negotiations pursuant to the so-called Structural Impediments Initiative. In these talks the United States called for changes in such purely domestic policies as antitrust enforcement, public works spending, and regulation of the distribution system, on the ground that these policies indirectly impeded U.S. exports. This subjection to Super 301 is a telling comment on the relative clout of Japanese influence. The European Community, with which the United States has as many trade disputes as it does with Japan, escaped targeting under Super 301, simply because the E.C. never would have tolerated such browbeating.

The truth, then, is that the Japanese presence in American politics has been essentially a defensive one, aimed at countering the move toward greater protectionism. There have been a few tactical successes in this effort, but the general pattern has been one of steady reverses.

All of this raises a deeper objection to Choate's thesis: namely, that the Japanese political presence, considered on the whole, has been beneficial rather than harmful. For the United States to maintain open markets helps Japanese and other foreign exporters, to be sure. But more important, it helps American consumers by giving them the freedom to buy the best products at the best prices; it also helps American industry by promoting greater productivity and efficiency under the spur of foreign competition. On matters of trade policy, then, there is a congruence between foreign "special interests" and America's long-term general interest.

Until recently, there was very little organized private lobbying in favor of free trade. The main identifiable beneficiaries of open markets—consumers—are far too dispersed to make an effective lobbying force. Free trade has therefore had to depend on ideology and foreign-policy concerns for its support. By contrast, those who stand to gain from high import barriers—industries facing foreign competition—know who they are and can easily organize to apply concerted political pressure. Accordingly, in the game of insider politics, the protec-

CHASE PHOTOGRAPHY

tionists have long held the advantage. The results can be seen in our trade policies on agriculture, textiles, and steel, where powerful domestic lobbies have succeeded in exempting themselves from the laws of the marketplace, beggaring the rest of the country for their own private benefit.

But the rise of foreign lobbies has helped to counteract this built-in bias. Furthermore, a growing portion of U.S. industry depends on foreign sources for components and materials and therefore has a vested interest in open markets. Thus, foreign producers and downstream U.S. industries, as well as American importers and retailers, now form a coalition of interests with sufficient political resources to at least challenge the cozy entrenchment of the protectionist lobby.

John Stuart Mill once noted that "a good cause seldom triumphs unless someone's interest is bound up in it." The good cause of free trade, always befriended by economists, is at last attracting some support with political muscle.

The trench warfare of special-interest lobbying is admittedly an ugly sight, whether the checks to pay for it are cut here or in Japan. The current system is riddled with abuses—in particular, the "revolving door" between public service and private lobbying. But these problems aren't confined to foreign lobbying; they apply also to domestic special interests and on a much larger scale. To single out the "Japan Lobby," as Choate does, is to engage in invidiously selective indignation.

There is a very simple solution to any problems caused by foreign influence over trade policy. All we need to do is tear down the many barriers that still hinder access to our markets and stop spoiling for a trade war with other countries. The "Japan Lobby" would close shop overnight.

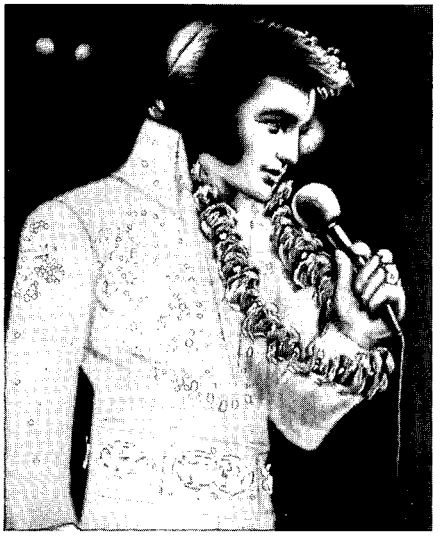
Brink Lindsey is an attorney specializing in international trade regulation with Willkie Farr & Gallagher in Washington, D.C.

Carolina in My Mind

BY RICK HENDERSON

Whistling Dixie: Dispatches from the South, by John Shelton Reed
Columbia, Mo.: University of Missouri Press, 241 pages, $19.95

Why does a region appeal both to natives and to outsiders? Why do people want to call it home? Why do they return there after careers or families have taken them away? While John Shelton Reed doesn't explicitly answer these questions in *Whistling Dixie,* one consistent theme runs through this collection of his essays: Much of a region's charm springs from its own cultural idiosyncrasies. In the American South, he contends, stamping out these differences, and homogenizing American culture, will make the entire country a less vibrant and a poorer place.



Reed is a professor of sociology at the University of North Carolina. Most of these essays originally appeared as columns in the conservative monthly *Chronicles.* The Old Right promotes *Chronicles* as its response to *The New Yorker*; many of the articles there seem anachronistic—as if you were picking up a decades-old copy of the *Saturday Evening Post.* But unlike the other academic paleoconservatives who write for *Chronicles*, who seem to pine for the Old South (before the Civil War?), John Shelton Reed lives in the here and now. And he enjoys it.

Chapel Hill, Reed's home (and mine for 14 years), has a well-deserved reputation as the left-liberal haven in a conservative state. When Jesse Helms broadcast television editorials in the 1960s from Raleigh, he told the state legislature that it didn't need to set aside land for a state zoo; it only needed to "build a fence around Chapel Hill."

But these essays, which take us from the final days of the Carter administration to early 1990, demonstrate the author's love of his hometown, despite its more animated residents. Along the way we briefly meet Reed's family, his academic colleagues, and his fishing buddies. He provides the front-porch atmosphere of an unsappy Garrison Keillor. And calls himself a "crypto-neo-semi-Agrarian." You get the idea.

Reed's academic work focuses on the contemporary South and its culture. But, as he writes in the preface, these essays "are *not scholarly articles*, understand? If you use them for that, you'll void your warranty." And what stuffy academic would admit that on his office wall "is a picture of Elvis ascending a golden staircase to a heavenly Graceland where his mother waits for him and Hank Williams extends a hand in greeting"?

While he may have voted for Jesse Helms, Reed doesn't share the senator's fixation on people who engage in "alternative lifestyles." On the Robert Mapplethorpe controversy: "When it comes to state support for sadomasochistic homosexual art, give me [state Rep.] Billy Randall's bill to make Little Richard's 'Tutti Frutti' the official rock and roll song of Georgia....Georgia ought somehow to honor the best poet from Macon since Sidney Lanier."

Rock 'n' roll music appears prominently in Reed's work—both because he likes it and because it helped

bring blacks and whites together during the turbulent '50s. In his UNC course on the sociology of the South, Reed places Elvis Presley alongside William Faulkner as a giant in Southern culture.

Several essays feature the Rev. Billy C. Wirtz, a tattoo-laden, earring-adorned, boogie-woogie pianist who plays his own "queasy listening" tunes in nightclubs up and down the East Coast. Reed caught Billy's bar act, wrote a favorable review, and was then invited to appear in the Rev.'s only rock video (to date). The tune, "Teenie Weenie Meanie," is a love song for a midget lady wrestler. Somehow Pat Buchanan wouldn't fit here.

While many of his paleoconservative friends deplore modernity and the decline of the West, Reed celebrates one recent Southern development: improved race relations. "States' rights is a self-evidently reasonable and just doctrine...so long as it's not a mask for the states' wrongs of racial discrimination," he states. "If 'pro-Southern' comes to mean 'anti-black,' the South will never rise again, and it won't deserve to."

The term *libertarian* doesn't accurately describe Reed, but he does have some favorable things to say about the "political perpendicular," as one of my Chapel Hill friends would say. Reed rails against the Reaganites who went to Washington and became part of the Beltway establishment. While uncertain about a new military draft, he opposes civilian national service, following from his "default libertarian assumption that free men and women shouldn't be forced to do *anything* without a damn good reason."

And he doesn't have much nice to say about politicians. "Most principled anti-Federalists," he writes, "have things they'd rather do than go to Washington and push people around. They have products to manufacture, fields to harvest, books to write, sick people to heal—and if they don't have something better to do, they'll find something."

Reed loves Southerners and the South, but he doesn't possess the provincialism and distrust of outsiders so often associated with Dixie. When he introduces us to his fishing buddies, or the crowd who goes with him to Durham Bulls baseball games, chances are most of them are transplanted Yankees. His only warning to them: Don't try to understand everything that's going on around you. You aren't supposed to understand it all. I don't—and it doesn't bother me.

Not every essay sticks so closely to home. On mail-order brides: "There's obviously a U.S. market for old-fashioned girls, and the Third World is well on the way to cornering it." On a commemoration of the French Revolution that included all the "Tribes of France" but the Bretons and the Basques: "The place won't be the same again. I'm sure [the promoter] saw his parade as a celebration of the fact, but I'm afraid I saw it as another half-million votes for the thuggish Jean-Marie Le Pen and his nativist National Front."

From Barcelona, Reed offers surprising hope for a unified Europe as "a loose confederation of communities: Catalans, Flemings, Bretons, Alsatians, Basques, Occitans, Welsh—in time, maybe Croats, Vlachs, Lapps, Ukrainians, who knows? This vision of all the old, suppressed, organic Nations rising up, shaking free of the artificial strictures of States, becoming fully themselves—this pluralistic vision conflicts with the ambitions of the Eurocrats in Brussels, but it's a lovely idea, and I wish it well."

Does anything in *Whistling Dixie* break new ground? Not really. Others have addressed some of these areas before. But remember, this isn't a collection of academic papers; it's a monthly report from the front. Reed has a distinctive voice and his honesty and humor draw the reader in. I know four other *Chronicles* subscribers; three of them often read his "Letter from the Lower Right" and nothing else.

And it's refreshing to hear a genuine Southern voice. Too often outside the South, the "Southerners" I come across are the ones on National Public Radio—pretentious novelists with Piedmont Carolinas accents who write 400-page stream-of-consciousness tomes in which characters watch the traffic lights change. Real Southerners aren't just whiny yuppie wannabes who listen to R.E.M. and 10,000 Maniacs; nor are they all dirt-eating Bubbas sitting in trailers cleaning their shotguns. They don't fit neatly into any predefined category. But they do maintain a sense of independence and regional pride that Reed appreciates and admires.

Anyone fascinated by the diversity of American regional cultures and traditions will delight in *Whistling Dixie*. John Shelton Reed reminds this North Carolina native of what makes that part of the world special, and why I hope to return there someday.

Rick Henderson is assistant managing editor of REASON.

Weird Science

BY CHARLES OLIVER

Great Mambo Chicken and the Transhuman Condition: Science Slightly Over the Edge
By Ed Regis, New York: Addison-Wesley, 320 pages, $18.95

Where is the line separating cutting-edge science from delusion and quackery? Scientists themselves have never been very good at drawing it. Repeatedly, the harebrained schemes of one day have become the accepted paradigms of the next. I had to remind myself of this fact quite frequently as I read Ed Regis's new book *Great Mambo Chicken and the Transhuman Condition.*

The transhuman condition, Regis tells us, will be achieved when humans "have *gone everywhere, done all things*, and so on." Regis catalogs the efforts of various groups and individuals to reach that end. And a colorful lot of individuals they are, ranging from engineers who are just slightly ahead of their time to dreamers who are, to put it mildly, very much ahead of their time.

Regis tells of one scientist whose 5-year-old daughter accidentally saw him naked. "Did God really make you like that?" she asked her father. "Couldn't he have made you better?" For most of us, this question might lead to joining a gym or going on Slim Fast. But for this man, it led to speculations on how to redesign the human body, what organs to get rid of, how to improve the ones we keep, and whether it's even desirable to keep an organic body. Even the appreciative Regis refers to the hubris, or arrogance, of his subjects on several occasions.

At the more practical end of Regis's spectrum is Bob Truax, who built the rocket that Evel Knievel used in his ill-fated attempt to jump the Snake River Canyon. Now Truax wants to do for rockets what Jobs and Wozniak did for computers. He dreams of ending government's monopoly on space travel and giving individuals the ability to journey into space on their own. While Truax's goal of a rocket in every garage may not be reached any time soon, Regis notes that others—such as the late George Koopman and his American Rocket Co.—have had some success in their attempts to develop private commercial rockets.

Space travel for the masses may be decades away, but the people at the Alcor Life Extension Program are prepared. For a fee, they'll freeze someone and thaw her out years later. (For a smaller fee, they'll freeze only the head.) Actually, the thawing presents some difficulties. Freezing organs can cause them to rupture. Current technology cannot revive or repair Alcor's deep-frozen clients. But Alcor believes that one day science will solve these problems, and a future generation will revive Alcor's clients.

Regis notes that nanotechnology is the most promising vehicle for reviving Alcor's stiffs, er, clients. Nanotechnology theorist Eric Drexler postulates a world in which robots smaller than most organic cells will satisfy all of our wants. Want a rocket built? Just program millions of the little buggers to build one. Want to revive a frozen body? Just inject nanorobots into the corpse, and they'll examine every cell, repairing each one and reviving the patient. As for the frozen heads, one person tells Regis, "You drop the head into a bucket of nanomachinery and a new body grows out of the stump of the neck."

As Drexler sees it, there's virtually no limit to what the robots can do. Nanotechnology, he claims, will give us "complete control over the structure of matter." One could synthesize beef without the aid of cattle, for example. Regis writes, "You'd open the box, shovel in a quantity of cheap raw materials—some dirt, straw, grass clippings, or whatever—then close the box and let the assemblers ply their trade, which is to say that they'd break down certain chemical bonds and make others, all according to a plan. After a while you'd open a box and out would roll a wad of fresh beef." Of course, we'll have to build in plenty of safeguards, or the robots will continue to turn matter into beef until the entire universe is converted into a giant rump roast.

It would be easy to dismiss these people as kooks, but many of them have solid credentials. Bob Truax was there at the beginning of rocketry, working with Robert Goddard. Drexler teaches at Stanford. Regis himself certainly treats his subjects with sympathy and respect. *Mambo Chicken* is very funny, but the humor rarely comes at the expense of the people written about.

Still, listening to these people talk is rather like listening to medieval theologians discussing how many angels could dance on the head of a pin. They seem impractical, almost otherworldly. While they spend a great deal of time talking about what we can do with advanced technology, there's precious little discussion of how to produce that technology. Certainly, if we had lots of little robots that repair damaged cells, then we could let them repair damaged cells. But where are the robots supposed to come from?

Yet as far as I can tell from *Great Mambo Chicken*, none of these people wants to use the government to enforce his utopian schemes. Indeed, several explicitly oppose government aid. Without that government power, these people are, at worst, harmless eccentrics. At best, they are the prophets of a new techno-utopia.

Charles Oliver is assistant editor of REASON.

Static Interference

BY THOMAS W. HAZLETT

FCC: The Ups and Downs of Radio-TV Regulation
By William B. Ray, Ames, Iowa: Iowa State University Press, 200 pages, $24.95

William B. Ray, a careerist from the innards of the Federal Communications Commission, has stepped out of the bureaucratic closet and onto the public stage with *FCC: The Ups and Downs of Radio-TV Regulation*. His story is simple and informative: TV and radio programs have often broadcast wildly inaccurate news and/or information—not to mention irresistibly titillating entertainment, only to be inadequately policed by the truth monitors at the FCC.

In this litany of broadcast horror stories the feds regularly bark, whine—and finally turn tail and run, with scarcely a faint whimper. Behind its "Don't-you-ever-pull-that-stunt-again" bravado, the FCC has repeatedly chosen not to yank licenses from troublesome users of the "public airwaves." And this bureaucratic leniency is the source of Mr. Ray's indignation.

Regulation of broadcasting has been a huge failure, he sees. And we need much more of it, he concludes.

Happily, this policy confusion does not render the volume's examples useless. Indeed, the strength of the book is its litany of famous instances of bad reporting coupled with insider summaries of the regulatory reactions. For example, when the Peabody Award-winning CBS documentary "Hunger in America" aired

in 1969, it opened with the distressing scene of a doctor trying (vainly) to save the life of "an emaciated black infant." The announcer asserted: "Hunger is always easy to recognize when it looks like this. This baby is dying of starvation."

Well, that's easy for CBS to say. Yet the infant was not starving—it had been born prematurely due to a fall by its pregnant mother. And its parents were not poor, but "moderately well-to-do." CBS did not check the child's birth certificate, nor did it interview the doctor in attendance or any hospital personnel, despite the fact that the local San Antonio newspaper had already printed a story detailing the truth of the tragedy. The only accurate points were that the baby was black and that it was dying. (One can hear the CBS newsroom even now: "Hank, can you send over a dead black kid? Gee, thanks—and get 'im over here for the 6 o'clock, will ya?") It was a perfectly cynical piece of broadcast "reporting."

Ray also describes the news twisting of KMPC, a Los Angeles radio station, in the late 1940s. Owned by a big-bucks conservative, G.A. Richards, the station simply fired on-air talent who refused to slam Democrats while puffing up Republicans, to refer to General MacArthur in strictly respectful tones, to call President Truman a "pipsqueak," and to "make no unfavorable mention of the Ku Klux Klan."

Time and again such broadcast sleaze is brought before the Federal Communications Commission, the licensor guided by "public convenience, interest, and necessity." And, lo and behold, no heads are chopped. Ray is exasperated. While "news faking and distortion by broadcast licensees...are violations of the public interest standard...the FCC has done little or nothing." CBS was investigated as a result of the "Hunger" episode, but the network skipped out due to the difficulty in separating "sloppy journalism" from outright fabrication—and (this really frosts Ray) because it was not clear the corporate bigwigs had directly *ordered* the sensationalistic untruth.

In the KMPC case, a very long hearing outlived the first administrative law judge and then owner Richards himself. After his widow copped a plea, agreeing not to jolt the "public interest" again, the FCC simply dropped the case as moot.

Ray's beef is that the agency is run by, as musclemen Hans and Franz would testify, nothing but a bunch of "gerlee mahn" commissioners; Ray's prescription for them would be to "Pump—you up." It is fascinating to see the moral underpinnings of a bureaucrat's bureaucrat. Ray's heroes are (1) the dissenting commissioners who decry regulatory inaction, and (2) agency staffers who persevere despite the wimpish leadership from above. Indeed, he stands in awe of the "brilliant" former FCC counsel, Henry Geller, who performed miracles through his ability to "rationalize irrational ruling[s]."

While Ray is politically conservative in his distaste for CBS-style liberalism, his most vile attacks are reserved for Reagan-era deregulators on the commission.

Similarly, another loyal staffer much admired by Ray describes his instructions from the commission: "They told us who is to get the license, but when I asked what the reasons were, Commissioner Lee just said, 'Lonnie, you'll think of some.' " When the underlings went back to their typewriters to ingeniously crank out the evil justifications like good little Germans, they apparently qualified for Heroic Achievement Awards from the Bureaucrats' Club. What a value structure with which to entrust definition of the "public interest"!

Ray's tunnel vision (PG-13 in each eye) yields a colorful indictment of private mischief and cowardly regulation, without so much as a wink toward global truths. But read the book, Mr. Ray. Your subtitles—"FDR Takes Care of His Friend Elzey," "How Lyndon Johnson Got Rich," "The Eisenhower Gang Hands Out the Plums"—represent the public-interest standard made *operational*. Allowing bureaucrats and the politicians they serve to snatch away licenses from those whose broadcasts tread too far from the straight and narrow is a chilling way for the electronic press to do business.

It is entirely appropriate that while Ray is politically conservative in his distaste for CBS-style liberalism, his most vile attacks are reserved for Reagan-era deregulators on the commission. This philosophical ambivalence nicely parallels the law: The two prevailing precedents granting the government the right to regulate the content of broadcast speech, *Red Lion* (1969) and *Pacifica* (1977), involved, respectively, a right-wing Christian radio station airing the views of the Rev. Billy James Hargis and a leftish, counterculture radio broadcast of George Carlin's "seven dirty words." True to their task, regulators in the "public interest" chase down minority perspectives wherever they may lurk.

Ray's book contains some spicy vignettes of airwave entrepreneurship. I was tremendously impressed, for example, by the scam wherein a radio minister broadcasts a threat to air "certain damaging information against a prominent married man" unless a $100 contribution was made with Godspeed. The public service (well, he could have just revealed the unfortunate news, you know) netted a tidy sum from many of the male faithful.

Yet Ray's policy analysis is utterly devoid of redeeming social value. Examples of every kind of hustle, blasphemy, mendacity, or fabrication can be found in far greater numbers in the print media. But we find much more journalistic excellence there as well. Individuals are able to exercise their sacred First Amendment rights to select the news and entertainment sources they wish to endure. The politics of defining the "public interest"—so crucial to the institution under study, and so rudely described in this book—is simply swept away by the aseptic assertion that, wherever untruths

live, good regulation is the solution.

Such a purely bureaucratic perspective is startling at this late date. (Note to serious students: This book pops out of a scholarly vacuum. Such outstanding thinkers on broadcast regulation as Ithiel de Sola Pool, Lucas Powe, Matthew Spitzer, Robert Crandall, Bruce Owen, and Ronald Coase go unmentioned. It is a practitioner's tome—with an oddly impractical quality.) The author falls repeatedly into deep, dark wells with statements unsupportable on their face.

Take this one: While radio and TV stations should lose their licenses when caught with their accuracy ratings down, Ray posits that the FCC "has no licensing power over newswriters, commentators, or producers and it should not have such power." This, he allows, "would turn Uncle Sam into Big Brother." Even pensioned employees of the federal government ought to be able to see the lunacy in a regulatory scheme that says that, of two identical broadcasts, one is legal because it is the reporter's true opinion, while the other is not because it merely reflects the owner's personal bias. Imagine a First Amendment (not even important enough to merit an entry in this book's subject index) that protected editors and writers from sanctions but gave the state authority to toss publishers in the slammer. There's your free speech, pal.

And speaking of free speech, Mr. Ray, you're quite lucky for it. If this little volume had had to hurdle the rigorous licensing procedure of the HCC (Hazlett Communications Commission) for scholarship in the "public interest," you'd find yourself in quite a regulatory dilemma. You've made many controversial statements here, sir. You fail to present a balanced perspective. Your position could be found quite dangerous to the public weal. Shall we schedule a full prepublication hearing for sometime in mid-'93?

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Space Enterprise: Beyond NASA, by David P. Gump, New York: Praeger, 220 pages, $19.95. David Gump, the founder of *Space Business News*, a leading trade publication, insists that space ventures do not have to be expensive. The massive plume of exploding fuels we see when a space shuttle takes off, for example, accounts for only 1 percent of shuttle costs. "The bloated expense of NASA's space shuttle," Gump writes, "stems from huge payrolls and overly complicated equipment." NASA and its contractors have assigned some 24,000 people to the shuttle.

Gump compares the progress of aircraft development with that of spacecraft development. Sixteen years after the Wright Brothers' first successful flight, commercial passenger service from London to Paris began. In 1928, just 25 years after the flight at Kitty Hawk, Boeing was selling commercial airplanes. Yet beginning in 1975, 16 years after the first space flight, the U.S. fleet was grounded for six years between Apollo and the space shuttle. And in 1986, the date Boeing should have been marketing a commercial spacecraft, the *Challenger* exploded and brought America's entire civilian space effort to a halt.

Airplane development relied on private capital, engineering, manufacturing, and management. The thrust of these efforts was to move quickly from research and development into commercial production.

Spacecraft development has relied upon public-sector funding and management. Engineering and manufacturing have been carried out in a research-and-development atmosphere in which there is little incentive to keep costs down. Gump illustrates the trade-off NASA officials must make between technical and political risk:

"Only a 30-billion dollar version [of the space station] was offered to Congress....A less risky approach would have started with a small module that NASA could use as a test-bed for later stations. NASA didn't offer this option for fear Congress might decide the prototype was good enough and refuse to pay for the full-scale version....The technical risk is higher, but the political risk of being stuck with the interim version forever is eliminated."

Gump notes that the military's desire for a space fighter/bomber/spy plane will long delay development of a straightforward space plane. But the root problem with all the futuristic new space vehicles—the British HOTOL, the West German Sanger Spaceplane, the European Space Agency's Hermes—is that they are bound by the political realities that have hobbled the shuttle.

By contrast, the strength of the small-technology, private-sector approach is diversity, and Gump provides a roll call of small start-up companies, from American Rocket and Orbital Sciences to Space Services and Pacific American Launch Systems. No one knows the best (that is, the cheapest and safest) way to launch payloads into space. Competition among a dozen small space firms will tend to reveal the answer.

Gump reviews the private alternatives to NASA's $30-billion-to-$80-billion space station. One firm, for example, proposes using the 14-story external tanks that power each shuttle into space as construction material. After bringing these giant tanks 99 percent of the way into space, NASA drops them back into the atmosphere to burn up over the Indian Ocean.

For $200 million to $300 million, External Tanks Inc. can turn the enormous interiors of these containers into roomy laboratories. Its "Labitat" facility would be 50 times larger than NASA's version and cost about one-hundredth as much. To get its hands on NASA's external tanks, however, the firm has been careful to describe Labitat as a complement to the space station—not a substitute for it.

A dazzling array of space projects has been proposed, but few have managed to attract venture capital. Throughout the 1980s, NASA's promise of weekly launches at $600 a pound scared investors away from private launch ventures. With that promise revealed as empty, the trickle of venture capital flowing into space enterprises may become a stream. If it does, we can expect the space industry of the 1990s to grow as dramatically as the computer industry of the 1980s.

—Greg Rehmke

BUSH, BUCKWHEAT, AND THE BUDGET

BY THOMAS W. HAZLETT

I believe that the Buckwheat episode has been vastly underestimated. It serves not simply as a metaphor, but as a *manual*, of standard contemporary American operating procedure.

Last fall an alleged interview with the "Our Gang" artist was broadcast not on Fox or the Comedy Channel but on ABC, one of the big three U.S. television networks. It appeared not on "Entertainment Tonight" but on "20/20," an in-depth, thoroughly researched, not-subject-to-the-pressures-of-a-daily deadline news show that is named for medically perfect vision.

They took 15 minutes of America's most valuable time to interview a dead guy. A guy listed as dead in all the standard library references. A guy ABC was explicitly informed was very, very dead before the "interview" aired. By no less an authority on the subject than Spanky, who frantically voice-mailed the ABCer in charge: "I told her that Buckwheat had died. The man's an impostor, clearly. He doesn't even look like Buckwheat."

But ABC put the interview on the air anyway. What does Spanky know? (Well, he knows a real, live Buckwheat when he sees one.) Americans ask: Was this some kind of a joke? Yes, it was. Not that ABC is laughing out loud about it today; the network has even fired some low-level staffer as penance. But they couldn't stop themselves from going with the Buckwheat piece—it was too good a *story*. That's the joke. It's on *America*. Get it?

Which brings us to the present Administration. After the budget imbroglio, ABC researchers may be fired for airing live interviews with George Bush. The collapse of the president was a shockingly sudden drop from invincibility: He was riding high on the crest of war fever and splat—Bush the Wimp. Again. And all that money shelled out to Peggy Noonan to put something in George's mouth that would make him a Man, wipe away George Will's "lap-dog" moniker, and get the empty suit with a résumé some respect.

The high-priced talent had come through. Ms. Noonan gave George Bush a stunning GOP script for that national convention prime-time audience. And when the then-vice president stepped out of Ronald Reagan's shadow, he stood tall, lean, tough, confident. "Read my lips," he leveled, "no new taxes."

From Clint Eastwood to Jimmy Carter in two quick fiscal cycles. But why? George didn't have to be Jimmy. When the budget came down, the White House had a loaded .357 pointed right at Congress's noodle: Gramm-Rudman.

All the President had to do was demand fiscal restraint and veto, veto, veto. Blammo! Gramm-Rudman blows the budget deficit to a pulp. Spend some more, Mr. Foley. Go ahead, make my fiscal year.

But poor, panicky George, fingers all aquiver, tosses his gun in the river, lobs his wallet to the hold-up artists, and pledges his one and only asset of any value ("read my lips?"—yeah, take that, too). And the hold-up men are *unarmed*.

Come the November elections, Democrats running *against* tax increases (I'm not making this up) kicked GOP butt; governorships in Kansas, Nebraska, and Florida switched from R to D based on antitax outrage. Gov. Jim Florio's hefty New Deal-style tax hike in New Jersey damn near got popular senator/small forward Bill Bradley unelected. (Florio wasn't on the ballot, and Democrat haters had to vote elsewhere.) And Mario Cuomo immediately moved to slash the New York state budget, so virulent was the electoral mood. The *New York Times* summed up the 1990 election message with the headline, "Voters Say 'No' to Taxes."

The National Consensus for Higher Taxes was a Beltway hoax—and George fell for it! All this in a year when the Republicans, on the strength of the president's big, bad popularity ratings (soooo high until the free fall), were planning stunning advances. Like the big, bad A's in the Series, going from Oakland to Choakland in four easy humiliations, Bush simply washed out come Showtime. (Many Americans now suspect, in fact, that George Bush *is* an Athletic Supporter.)

I've never personally run a campaign for the presidency, but let me take a stab: When a candidate wins the office by pledging something important on national TV implicating his own body parts, people tend to remember.

There is no more reality in the budget "deal" than in the Buckwheat interview. Taxes were jacked not due to any truncation of receipts but because spending continues to balloon: up 7.5 to 8.5 percent over inflation, even with a real defense spending decline of about 8.5 percent.

Some will point out that we have special needs now. Like the S&L bailout. Isn't that special? No, Church Lady. Fifty billion dollars to patch leaky federal programs of the last budgetary cycle is really quite typical of what the government spends money on. Ever peruse the ag budget?

Even assuming Bush is a wimp, why would he select a policy so vacuous, so boneheaded, so clueless....Oh yeah, I do recall the Quayle thing. Well, it must just be something very American. Why would the American Broadcasting Co. interview a known dead guy?

So Bush didn't need to roll over and play dead, and renege on his only promise, and look like a jerk, and get played for a fool by the Democrats, and raise taxes while doing nothing serious about the deficit....But that's the joke. Get it?

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